

# Town of Hamilton

## Request for Qualifications (RFQ) for Solar Energy Management Services

For:

Town of Hamilton Landfill (Required) and  
Other Town-Owned Sites (Optional)

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### Massachusetts General Law Chapter 25A §11I Guaranteed of On-Site Generation

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<b>Solicitation Released</b>	July 28, 2016
<b>Pre-bid Conference:</b>	August 11, 2016 10:00 AM
<b>Questions Due:</b>	August 18, 2016 @ 4:30 PM
<b>Answers Addressed via Addendum</b>	August 24, 2016
<b>RFQ Responses Due:</b>	August 31, 2016 11:00 AM
<b>Anticipated Interviews:</b>	September 19, 2016
<b>Anticipated Selection for Negotiations:</b>	September 26, 2016

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# 1. Introduction

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**Awarding Authority:** Town of Hamilton

**Address:** Hamilton Town Hall, 577 Bay Road, Hamilton, MA

01936 **Contact Person:** Michael Lombardo, Town Manager

**Email:** mlombardo@hamiltonma.gov

**Telephone:** 978-468-5572

The Town of Hamilton (the “Town,” or the “Awarding Authority”) seeks qualifications, pursuant to 225 CMR 19.00, from qualified, interested parties (individually a “Respondent” and collectively the “Respondents”) with one or more ultimately selected to serve as a contractor (“Contractor”), to design, procure, install, test, and commission a solar photovoltaic (PV) power generating system (“PV System”) under a solar Energy Management Services (EMS) agreement with guaranteed on-site electricity generation for the Town of Hamilton.

Respondents to this RFQ are required to demonstrate qualification in identifying, assessing, planning, designing, financing, installing, owning, operating, and maintaining solar power electric generation facilities.<sup>1</sup> The Town looks favorably upon Respondents that demonstrate experience successfully providing solar EMS in Massachusetts and that are willing, if selected, to make investments in the project while the details of Massachusetts’ upcoming solar policy are finalized, as reflected in the evaluation criteria herein.

The Town may cancel this RFQ, or may reject in whole or in part any and all Responses if the Town determines that cancellation or rejection is in its best interest.

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<sup>1</sup> The Respondent shall also be required to submit qualifications of any entity with which it intends to subcontract all or any work associated with the solar installation(s).

## 2. General Information

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### 2.1 Project Description

Through this RFQ, the Town intends to enter into a solar EMS agreement that support the Town's functions, policies and goals, including: (1) reducing energy costs, (2) promoting and supporting the development of renewable energy resources, and (3) continuing our efforts as a Designated Green Community in Massachusetts to reduce our carbon footprint

Specifically, the purpose of this RFQ is to solicit qualifications under 225 CMR 19.00 from Respondents to design, procure, install, test, commission, own, operate, maintain, and decommission a solar photovoltaic (PV) power generating system ("PV System") with guaranteed on-site electricity generation at one or more of the sites identified in this RFQ.

The Town aims to identify, through this RFQ, the most qualified Respondent that: (1) meets the needs of the Town; (2) demonstrates a thorough understanding of the current solar policy context in Massachusetts; (3) demonstrates ability to successfully finance and complete solar EMS projects; (4) demonstrates a willingness to invest in project development despite the evolving solar policy landscape in Massachusetts; and (5) demonstrates ability to meet development deadlines needed to ensure the project is eligible for the Federal Investment Tax Credit (ITC).

#### 2.1.1 Project Term

The duration of this contract will be 20 years.

### 2.2 Project Scope

The minimum scope of this project is a ground-mounted PV installation at the Hamilton landfill; however, the Town is interested in exploring the possibility of developing solar at various sites including the Hamilton Public Safety Building and two Elementary Schools operated by the Hamilton/Wenham School District.

The Landfill site designated for the PV array is Town-owned. Site descriptions can be found in the attached facility profiles, and energy consumption data can be found in Section 6.8.

Site	Required?	Estimated PV System Capacity (kW)
Hamilton Municipal Landfill, Chebacco Rd. Hamilton MA	Yes	TBD
Hamilton Public Safety Building, 265 Bay Road Hamilton MA	No	5 kW
Cutler School, 267 Asbury St. South Hamilton, MA	No	TBD
Winthrop School, 325 Bay Road South Hamilton, MA	No	TBD
Total		TBD

The Town's landfill site above is discussed in further detail in Sections 6.7 and 6.8 of this RFQ.

## 2.3 Specifications and Other Conditions

Pursuant to 225 CMR 19.00, the Hamilton Selection Committee shall review Responses for substantial conformity with all specifications and other conditions set forth in this RFQ. Respondents shall acknowledge conformity with the required specifications and other conditions set forth in Section 6.4 of this RFQ and return this checklist with the Response.

- NOTE: Any exceptions to the required specifications and other conditions set forth in Section 6.4 of this RFQ shall be noted and explained in Responses.

Respondents shall review 225 CMR 19.00 (and proposed changes to these regulations)<sup>2</sup> to understand the Commonwealth's requirements for EMS contracts. Key project requirements provided 225 CMR 19.00 include, but are not limited to:

- Written guarantee that the selected Respondent will meet the guarantee of generation or reimburse the Town for the shortfall amount;
- Prevailing wage; and
- Performance bond relating to the installation of the PV system(s) in an amount equal to 100% of the estimated contract value from a surety company licensed to do business in the commonwealth and whose name appears on U.S. Treasury Department Circular 570.
- Payment bond, which shall remain in effect for 365 calendar days after the Commercial Operation Date of each System

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<sup>2</sup> See <http://www.mass.gov/eea/energy-utilities-clean-tech/green-communities/ems.html>

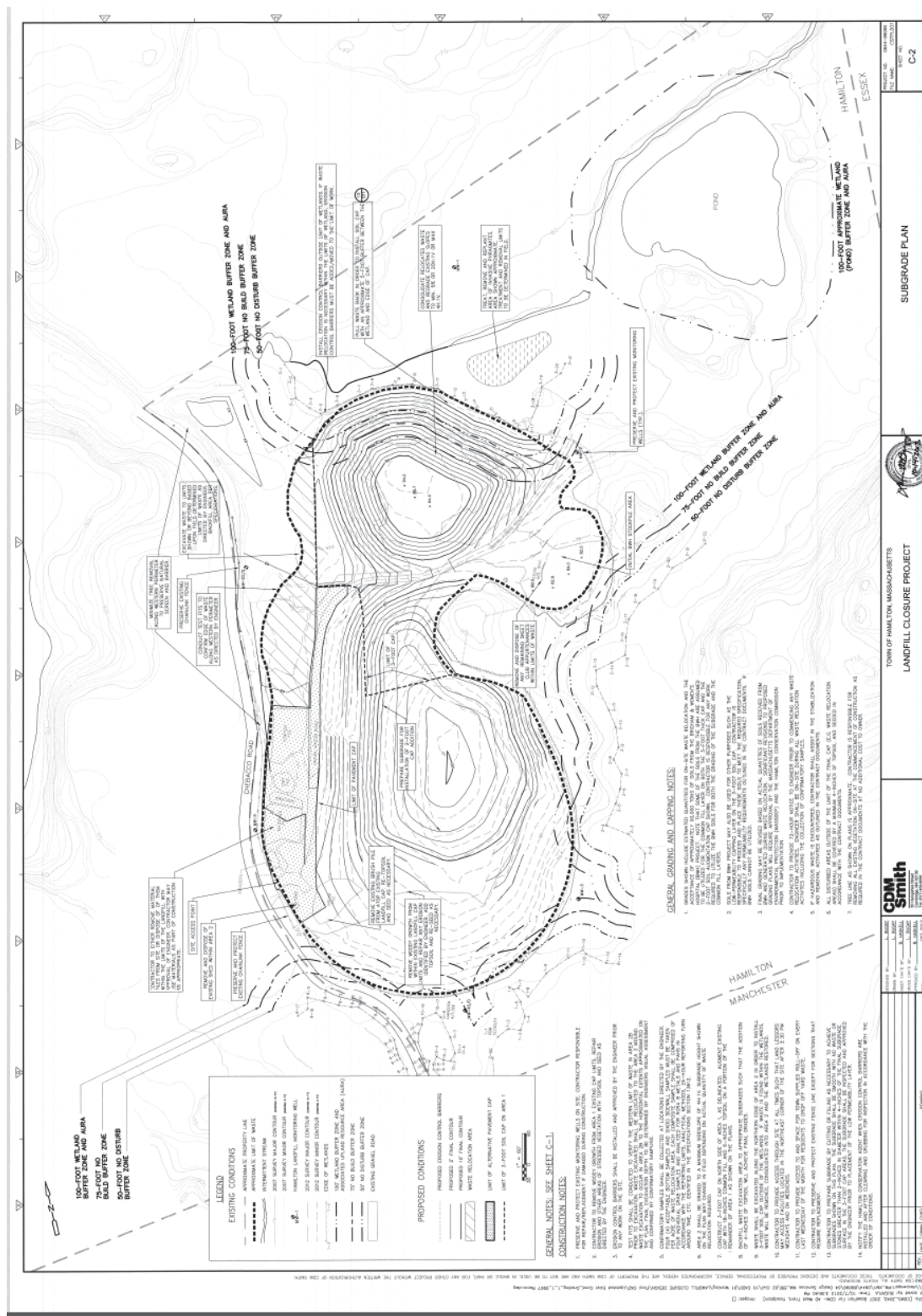
## **2.4 Landfill Environmental and Site Conditions**

The Town of Hamilton Landfill is approximately 12.7 acres in size, of which 7.1 acres were capped in 1980. The Landfill is located off of Chebacco Rd. in Hamilton. The site is fenced and secure, and access to the fenced landfill is from Chebacco Road. A site plan is shown in Figure 1.

The Hamilton Landfill is in the process of being capped and obtaining a Post-Closure Use Permit from the Massachusetts Department of Environmental Protection (MADEP). The selected contractor will need apply for a Major Post-Closure Use permit (BWP SW 36) from the MADEP Northeast Regional Office (NERO), pay any fees associated with the permit application, and provide a copy of the complete application with required documents to the Town of Hamilton. A pre-application meeting with MADEP is encouraged and can be scheduled through John Carrigan, Chief of NERO's Solid Waste Management Section, at [john.carrigan@state.ma.us](mailto:john.carrigan@state.ma.us) or 978-649-3299.

There are environmental monitoring programs in place for groundwater and landfill gas, and the Town performs semi-annual security and erosion inspections and annual vegetative maintenance for the site. The Town will require access to maintain these activities In order to comply with the DEP's closure package.

### Figure 1: Site Plan



## **2.5 Role of the Town**

To facilitate the Contractor in the execution of the Project(s), the Town will endeavor in their best ability to:

- Provide reasonable access to municipally-owned properties and buildings to obtain data (whether required or reasonably requested by the Contractor).
- Grant the Contractor sufficient access and occupancy rights to undertake the Project at the Premises. In this context, the Town will require the Contractor to enter into a Solar Lease Agreement, which will form part of the solar EMS agreement.
- Provide access for the assessment of sites and, for those sites selected for development, the installation, maintenance, and ongoing operation of the System.
- To the extent reasonable and appropriate, provide information/assistance to the Contractor in securing any remaining permits for the Project, including but not limited to local board approvals.
- Cooperate with the Contractor to the extent reasonable and appropriate on remaining issues with respect to site assessment, access, and facility construction and interconnection.

## **2.6 Responsibilities of the Contractor**

The Contractor is responsible for designing, procuring, installing, testing, commissioning, owning, operating, maintaining, and decommissioning a solar photovoltaic (PV) power generating system ("PV System") with guaranteed on-site electricity generation at one or more of the sites identified in this RFQ. In addition, the Contractor will be responsible for:

- Securing all required permits and approvals, including MADEP's Major Post-Closure Use Permit (BWP SW 36);
- Protecting the integrity of the landfill cap;
- Maintain existing stormwater controls and provide adequate erosion protection at the landfill site;
- Providing adequate security for the solar array and/or modifications to existing fencing at the landfill site as required;
- Providing a safe distance for clearance and access to landfill gas vents.
- Maintaining vegetation within areas of solar PV array;
- Paying any applicable real estate or personal property tax assessed against the Premises (the specific approach to the treatment of taxes will be determined with the selected Respondent in contract negotiations);
- Securing an assurance of net metering eligibility, per Massachusetts Department of Public Utilities Order 11-11-A (October 25, 2012), at no cost to the Town.
- Perform an investment grade audit per DOER specifications. The IGA should include all details necessary for the owner such as a transparent description of the costs used to calculate the PPA price.
- All other responsibilities, as outlined in the executed solar EMS agreement.



## 3 Solicitation and Response Process

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### 3.1 DCAMM Contractor Certification Process

Respondents are advised that advance certification by Massachusetts Division of Capital Asset Management and Maintenance (DCAMM) is required pursuant to M.G.L. c. 149 § 44. The required DCAMM certification should be for Energy Management Systems. Respondents must submit a Certificate of Eligibility and Update Statement with their Response to this RFQ.

Certification application forms are available from the DCAMM Contractor Certification Office at (617) 727-9320. Questions regarding DCAMM certification may be directed to the DCAMM Contractor Certification Office.

### 3.2 Pre-Bid Conference

A pre-bid conference will be held at Hamilton Town Hall, in the Memorial Room, on August 11. Prospective Respondents are encouraged to attend the pre-bid conference. Respondents interested in attending should confirm attendance by contacting the Contact Person for the Awarding Authority (see Section 1) and provide an estimated number of attendees.

### 3.3 Questions

All questions and inquiries concerning this RFQ must be submitted in writing to Michael Lombardo, Town Manager (mlombardo@hamiltonma.gov) no later than August 18, 2016 at 4:30PM. Inquiries will not be answered directly. The Town will issue an addendum, which will address the written questions submitted by the deadline, and be publically available to all registered vendors and on the Town's website at [www.hamiltonma.gov/Pages/HamiltonMA\\_WebDocs/forms](http://www.hamiltonma.gov/Pages/HamiltonMA_WebDocs/forms). It is the responsibility of the Respondent to contact the Town at the e-mail address above prior to the submittal deadline to ensure that the Respondent has received all addenda issued by the Awarding Authority.

### 3.4 Submission of Responses

A responding Contractor shall submit: (1) original and (6) hard copies, as well as one (1) single-file electronic copy (on a portable media), of its Response according to the requirements set forth for the format described herein. Complete Responses shall be submitted to the contact below by the time and date noted on the cover page of this RFQ:

Town of Hamilton  
Michael Lombardo, Town Manager  
577 Bay Road  
Hamilton, MA 01936

Each response will be reviewed for completeness, and incomplete responses may be rejected without further consideration. Respondents shall use the prescribed format to indicate their experience and qualifications and explain their responses.

The Town reserves the right to waive any minor irregularities and formalities in the selection of the Contractor for this project. While Respondents are required to submit responses that fully comply with the requirements set forth in this RFQ, alternative responses may also be proposed if the Respondent feels such responses provide measureable value to the Town. Such alternative responses must meet the requirements set forth in this RFQ.

### **3.5 Selection of Vendor and Contract Execution**

The Town will assemble a Selection Committee to evaluate and rank all Responses based on the criteria listed in this RFQ. Top three (3) candidates will be identified based on written Responses as well as answers to additional clarifying questions as requested by the Town. The Selection Committee may hold interviews with top candidates.

Following selection of a top-ranked Contractor, the Town may require the execution of a Memorandum of Understanding that defines the terms, such as required timeline, under which the Contractor will conduct a detailed assessment of solar potential and provide associated pricing details.

The Contractor and the Town will negotiate a solar EMS agreement at compensation which the Town determines is fair, competitive, and reasonable. The Town will review energy savings calculations and projections for evidence of positive economic benefits for the Town before entering into any solar EMS agreement.

## 4 Terms of Response

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The Hamilton Selection Committee will review each Response prior to the selection process for completeness and adherence to format. A Response will be considered complete if it includes all of the Minimum Required Items from the table in Section 6.1. Each section or subsection of complete Responses will be evaluated individually for completeness and to determine the most advantageous option for the Town.

The Hamilton Selection Committee's scoring will be summarized on a Formal Evaluation Form (Section 6.6). The Selection Committee may adjust the scores following interviews as provided in 225 CMR 19.00, and such additional interviews as the Selection Committee may deem necessary to evaluate the Respondents.

The Selection Committee will reserves the right to select the Developer that provides the most thorough and comprehensive Response, which best meets the needs of the Town, taking into account the Developer qualifications, submittal quality, and evaluation criteria.

### **Evaluation Criteria**

Complete Responses will be evaluated in terms of the reasonableness of the claims and commitments made, the completeness of the information provided, conformance with the requirements of and the instructions provided in this RFQ, and the Respondent's ability and willingness to satisfy and to exceed the specifications and conditions set forth in this RFQ.

The Town aims to identify, through this RFQ, the most qualified Respondent that: (1) meets the needs of the Town; (2) demonstrates a thorough understanding of the current solar policy context in Massachusetts; (3) demonstrates ability to successfully finance and complete solar EMS projects; (4) demonstrates a willingness to invest in project development despite the evolving solar policy landscape in Massachusetts; and (5) demonstrates ability to meet development deadlines needed to ensure the project is eligible for the Federal Investment Tax Credit (ITC).

For each subsection of Section 6.5, Respondents will receive a score of Unacceptable, Not Advantageous, or Advantageous per the criteria below.

	Unacceptable	Not Advantageous	Advantageous
<b>Management &amp; Performance Capabilities, Experience, and Project References (20%)</b>			
<b>Project Team Capabilities</b>	Incomplete or unclear.	Little information provided on general reputation and performance capabilities of the project team.	Complete, credible, and comprehensive. Respondent demonstrates superior reputation and performance capabilities.
<b>Project Team Structure and Roles</b>	Incomplete or irrelevant.	Project team not clearly defined and/or not fully relevant for project of this scope.	Project team well defined, thoughtfully assembled, and appropriate for project of this scope.
<b>References</b>	Negative or unrelated or not relevant to the proposal	Positive	Positive and relevant to the proposal
<b>Local Presence</b>	No current or planned local presence among project team members.	Unclear or little local presence among key project team members.	Key project team members located locally.
<b>Experience with Solar EMS Agreements</b>	Information not provided.	Little or no experience.	Demonstrated experience with solar EMS (also called PPA) projects that follow DOER's form contract
<b>Project Approach (20%)</b>			
<b>Engineering Study</b>	Incomplete.	Complete. Lacks detail or conveys a lack of experience, expertise, or understanding of engineering process.	Complete. Respondent demonstrates superior understanding of engineering process.
<b>At-Risk Investment in Hamilton Project</b>	Incomplete.	Complete.	Complete. Respondent demonstrates willingness to invest in Hamilton project while state solar policies are finalized and the EMS agreement is being negotiated in good faith.
<b>Permitting</b>	Incomplete.	Complete. Lacks detail or conveys a lack of experience, expertise, or understanding of permitting requirements and processes.	Complete. Respondent demonstrates superior understanding of permitting requirements and processes.

	<b>Unacceptable</b>	<b>Not Advantageous</b>	<b>Advantageous</b>
<b>Construction and Testing</b>	Incomplete.	Complete. Lacks detail or conveys a lack of experience and/or expertise.	Complete. Respondent demonstrates superior experience and/or expertise. Respondent clearly describes equipment quality and related factors.
<b>Service and Maintenance and/or Owner Training</b>	Incomplete.	Complete. Lacks detail or conveys a lack of experience and/or expertise.	Complete and comprehensive. Respondent demonstrates superior understanding of the most advantageous operations and understanding protocols for projects of this scope.
<b>Experience with Municipalities</b>	None	Little or irrelevant.	Demonstrated experience implementing solar projects with Massachusetts municipalities.
<b>Level of Effort Required by Town</b>	Unclear or incomplete.	Complete. Respondent requires comparatively high level of effort from local officials and/or staff during project design phase.	Complete. Level of effort required of local officials and/or staff is competitive.
<b>Quality of Products</b>	Unclear or incomplete.	Complete. Respondent provides little detail or anticipates using comparatively low-quality products.	Complete and clear. Respondent anticipates using comparatively high-quality products.
<b>Ability to Meet Town Timelines</b>	Ability to meet Town's timeline expectations.	Unclear response on how Respondent will meet the Town's timeline expectations.	Respondent's timeline matches the Town's expectations and/or includes beneficial alternatives.
<b>Statement on Time for Performance of Contract</b>	Incomplete.	Complete.	Complete and credible.
<b>Solar EMS Agreement</b>	Not provided.	Some terms and conditions provided.	Complete preferred template solar EMS agreement provided.
<b>Method for Guaranteeing Electricity Generation &amp; Determining Savings (20%)</b>			
<b>Method of Determining Energy Savings</b>	Incomplete or non-compliant.	Complete and compliant.	Methods for monitoring, measurement, and verification of energy savings conform to the most recent standards established by the Federal Energy Management Program of the U.S. Department. Response is clear and detailed.

	<b>Unacceptable</b>	<b>Not Advantageous</b>	<b>Advantageous</b>
<b>Determination of Shortfall</b>	Incomplete.	Complete. Unclear or inequitable.	Proposed methodology for calculating shortfall payments is equitable for the Awarding Authority. Shortfalls are calculated at the end of each contract year, based on production in that contract year, and shortfall payments are made annually.
<b>Financing Capabilities (20%)</b>			
<b>Finance Capabilities</b>	Incomplete or not credible	Complete.	Complete. Respondent demonstrates superior project financing capabilities and experience successfully financing projects.
<b>Financing Strategy</b>	Incomplete or not credible.	Complete.	Complete. Respondent provides detailed and credible discussion of its likely project finance strategy and methods for minimizing financial engineering costs.
<b>Financing Flexibility</b>	Incomplete or not credible.	Complete.	Complete. Respondent presents financing flexibility in regards to regulatory and incentive uncertainty.
<b>Pricing Methodology (20%)</b>			
<b>Pricing Methodology</b>	Incomplete	Complete, but lacks detail or conveys a lack of experience and/or expertise.	Complete. Respondent demonstrates willingness to engage in transparent negotiations and outlines the degree of transparency and/or granularity that the Respondent is amenable to during negotiations.

	<b>Unacceptable</b>	<b>Not Advantageous</b>	<b>Advantageous</b>
<b>Next Steps</b>	Incomplete	Complete. Lacks detail or conveys a lack of experience and/or expertise with the Solar Carve-Out Program and/or ongoing rulemaking process and net metering in Massachusetts.	Complete and thoughtful response. Respondent provides thoughtful recommendations for next steps, given the current status of the Solar Carve-Out Program and availability of net metering services.
<b>Maximizing Return to Town</b>	Incomplete or not credible	Complete.	Complete, credible and comprehensive. Respondent's presents a reasonable and detailed plan to maximize value to the Town.

## 5 RFQ Procedures

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**Modification or Withdrawal of Responses:** Any Response may be withdrawn or modified by written request of the Contractor, provided such request is received by the Town at the above e-mail address prior to the due date for Responses.

**Cost of Response Preparation:** The Town does not assume liability and will not reimburse any costs or expenses incurred by any Contractor (whether or not selected) in developing Responses to this RFQ.

**References and Disclosure of Information:** Submission of a Response shall be deemed permission to the Hamilton Selection Committee to make inquiries concerning the Respondent to any persons or firms deemed appropriate by the Selection Committee. The Contractor's submission of a Response shall be deemed acknowledgement that it is familiar with the Massachusetts Public Records Law, MGL c. 66, § 10 and is bound thereby. Disclosure of any information provided by any Contractor in connection with this RFQ shall be in strict accordance with the laws and regulations regarding such disclosure pursuant to MGL Ch. 66, § 10.

**Cancellation of Procurement.** The Town may cancel this RFQ, or may reject in whole or in part any and all Responses if the Town determines that cancellation or rejection is in its best interest. If the Town elects to make an award, the Town will shall negotiate a contract with the Respondent that the Town considers to be the most qualified per the evaluation criteria herein at a price that the Town determines to be fair, competitive and reasonable. If the Town is unable to negotiate a satisfactory contract with the selected Respondent at a price the Town determines to be fair, competitive, and reasonable, negotiations with that Respondent shall be formally terminated. In accordance with 225 CMR 19.00, the Town shall then undertake negotiations with the next most qualified Respondent, and so on, until either an agreement is reached or the Town cancels the RFQ. The Town is under no obligation to enter into a solar EMS pursuant to this RFQ.

- **NOTE:** The Town will review energy savings calculations and projections for evidence of positive economic benefits for the Town before entering into any solar EMS agreement.



## 6 Appendices

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This section contains the following appendices:

**To be completed by Respondent and submitted with Response:**

- 6.1 Cover Letter & Respondent Information Form
- 6.2 Certificate of Non-Collusion
- 6.3 Attestation Regarding Filing of Tax Returns
- 6.4 Specifications and Other Conditions Checklist

**To be considered by Respondent in developing Response:**

- 6.5 Response Format Template
- 6.6 Response Evaluation Form
- 6.7 Memorandum of Hamilton Landfill PV Array
- 6.8 Hamilton Energy Consumption and Cost Data
- 6.9 DOER Model EMSA Contract

## 6.1 Cover Letter & Respondent Information Form

The following information should be typed on Respondent's letterhead. Fill in all bracketed sections and delete or re-format all brackets, italics, and instructions. Black line or otherwise indicate all changes in wording, additions, or deletions.

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**Address:** Town Manager, 557 Bay Road, Hamilton, MA 01936

**Contact Person:** Michael Lombardo

**Email:** mlombardo@hamiltonma.gov

**Telephone:** 781-897-5950

RE: Respondent Information Form & Cover Letter for Solar Energy Management Services

Dear Mr. Lombardo,

In response to your Request for Qualifications ("RFQ"), we *[insert name of Respondent]* (the Respondent) hereby submit our Statement of Qualifications ("Response") to implement solar photovoltaic system(s) with guaranteed on-site energy generation at the following facilities included in your RFQ for the Town of Hamilton:

*[Indicate any preference for specific facilities: Hamilton landfill, public safety building, and additional sites owned by the Hamilton/Wenham School District]*

We offer the following commitments and representations to the Town of Hamilton ("the Town"):

- 1) The undersigned is authorized to submit this Statement of Qualifications on behalf of the Respondent and to bind the Respondent to its terms. We have fully reviewed the RFQ and any and all addenda thereto, and we fully understand the scope and nature of the project and contractual arrangements for which Responses are being requested.
- 2) Our Response has been prepared and is submitted without collusion, fraud or any other action taken in restraint of free and open competition for the response to the RFQ. Neither the Respondent nor any member of the Respondent's project team is currently suspended or debarred from doing business with any governmental entity.
- 3) We certify that (1) all of the information provided in our Response is true and accurate and that the Town may rely on such information in the evaluation of our Response; (2) we have read and understand the evaluation criteria in the RFQ; (3) we accept that the Town reserves the right to waive informalities and to reject in whole or in part any and all Responses; and (4) we accept that the Hamilton Selection Committee reserves the

right to select the Developer that provides the most responsive and responsible Response, which best meets the needs of the Town, taking into account the Developer qualifications, submittal quality, and evaluation criteria.

- 4) We understand that the Town seeks to identify, through this RFQ, the most qualified Respondent that: (1) meets the needs of the Town, (2) demonstrates a thorough understanding of the current solar policy context, (3) demonstrates an ability to successfully finance and complete solar EMS projects; and (4) demonstrates a willingness to incur project development costs despite the evolving solar policy landscape in Massachusetts. We accept that the Hamilton Selection Committee reserves the right to select the most qualified Respondent that best meets the needs of the Town, taking into account the Respondent's qualifications, submittal quality, and evaluation criteria.
- 5) We acknowledge that the work to be performed under any contract negotiated with the Town, including work by subcontractors, must comply with the provisions of the Massachusetts General Laws pertaining to prevailing wage.
- 6) We agree to take full responsibility for all costs of preparing this Response. We waive any and all claims against the Town and its employees, representatives and agents related to the cost of preparing, submitting and having the Town review and evaluate this Response.
- 7) We have included the following required items as part of our Response:

Minimum Required Items	Check if Included:
Completed Respondent Information Form	
Certificate of Non-Collusion	
Attestation Regarding Filing of Tax Returns	
Completed Specifications and Other Conditions Checklist	
Response in format of Response Form Template, including:	
• References of other Energy Savings Contracts, if available	
• Statement on Quality of Products to be Used if Awarded Contract	
• Methodology of Energy Savings	
• Evidence of General Reputation and Performance Capabilities	
• Statement on Time for Performance of the Contract	
DCAMM Certificate of Eligibility and Update Statement	
Adhered to Format and is Complete	

Sincerely,

*[Insert name of Respondent]*

*By: [Insert authorized representative]*

*[Print or type name]*

*[Street address]*

*[City, State, Zip]*

*[Telephone]*

*[E-mail]*

*[Date]*

### Respondent Information Form

Developer Point of  
Contact: \_\_\_\_\_

Name of Company: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ E-mail \_\_\_\_\_

Federal tax id# (SSN for individuals): \_\_\_\_\_

Organizational structure: Corporation: \_\_\_\_\_ Partnership: \_\_\_\_\_ Joint  
venture: \_\_\_\_\_

Individual/Proprietorship \_\_\_\_\_ Other: \_\_\_\_\_

Ownership: Public stock: \_\_\_\_\_ Privately owned: \_\_\_\_\_ Non-profit: \_\_\_\_\_

Minority and women business enterprise information (check as appropriate):

Minority owned: \_\_\_\_\_ Women owned: \_\_\_\_\_ Owned by person with disability: \_\_\_\_\_

Small Business: \_\_\_\_\_ SOMWBA Certified: \_\_\_\_\_

I have read, understand, and agree to comply with the terms and conditions for providing Energy Management Services to the Awarding Authority as stated in the Awarding Authority's Request for Responses. Furthermore, I hereby certify, under penalties of perjury, that this response has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

Signature

Date

If applicable, fill in the following:

I acknowledge receipt of Addendum No(s). \_\_\_\_\_, dated \_\_\_\_\_.

## 6.2 Certificate of Non-Collusion

The undersigned certifies, under penalties of perjury, that this bid or proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word “person” shall mean any natural person, business, partnership, corporation, union, committee, club or other organization, entity, or group of individuals.

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(Signature)

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(Name of person signing proposal)

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(Name of business)

### 6.3 Attestation Regarding Filing of Tax Returns

Please complete this form for each participating company on this proposal.

To: Town of Hamilton

Pursuant to M.G.L. ch. 62C, § 49A, I certify under the penalties of perjury that the undersigned offeror, to the best of his/her knowledge and belief, has filed all state tax returns and paid all state taxes required under law.

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Social Security Number or  
Federal Identification Number

Signature of Individual or Officer

---

Date

Name of Corporation

## 6.4 Specifications and Other Conditions Checklist

The Hamilton Selection Committee shall review all Responses for substantial conformity to the specifications and other conditions identified below. Responses and/or the negotiated solar Energy Management Services (EMS) agreement may contain additional services or terms, but the Hamilton Selection Committee reserves the right to consider Responses and proposed solar EMS agreements void if they do not substantially conform to the specifications and conditions outlined below.

Specifications and Other Conditions	Accepts (Y/N)
<p>The selected Contractor shall:</p> <ol style="list-style-type: none"> <li>1. Design, procure, install, test, commission, own, operate, maintain, and decommission a solar photovoltaic (PV) power generating system ("PV System") with guaranteed on-site electricity generation.</li> <li>2. Assist the Town in determining which municipal properties may be suitable for additional solar PV installations, in addition to those identified in the accompanying attachment.</li> </ol>	
If the Town elects to move forward with the project, the selected Respondent shall negotiate and execute a Memorandum of Understanding (MOU) with the Town. The MOU shall define the responsibilities of the parties, including the selected Respondent's responsibility to conduct due diligence and prepare a technical and price proposal for the Town's consideration.	
The Town shall negotiate a price contract with the selected Respondent at compensation which it determines is fair, competitive, and reasonable. The price proposal shall include a breakdown of cost structure and other price data for each proposed solar PV system. The selected Respondent shall disclose additional price data as required by the MOU.	
Subject to successful negotiations, the selected Respondent (the Contractor) and the Town will enter into a solar EMS agreement, and the Contractor shall design, procure, install, test, commission, own, operate, maintain and decommission a solar PV system with guaranteed on-site electricity generation at the project site(s).	
The selected Contractor is responsible for obtaining all necessary permits and approvals for the Project(s), including MADEP's Major Post-Closure Use Permit (BWP SW 36).	
The Town reserves the right to require the posting of an assurance, in a format acceptable to the Town, to cover some or all of costs associated with Contractor default, such as system decommissioning and site restoration.	
The installation must be in compliance with all local, state, and federal codes and standards, including all recent additions to the Massachusetts Building and Electric Codes.	
The Contractor is responsible for confirming that a Massachusetts Electrical Code (MEC) compliant interconnection, including any recommended infrastructure improvements, can be made at the interconnection point.	



Specifications and Other Conditions	Accepts (Y/N)
As a condition of project acceptance, the Contractor will provide "as built" and record drawings of all existing and modified conditions associated with the Project conforming to typical engineering standards. This should include architectural, mechanical, electrical, structural, and control drawings each stamped by a Massachusetts Registered Professional Engineer (P.E.) for the corresponding discipline.	
The Contractor shall assist the Town in meeting its annual solar EMS reporting requirements to the Massachusetts Department of Energy Resources.	
The Contractor will use a method for computing the actual generation and Guarantee of Generation that is wholly consistent with the letter and intent of the most recent version of the U.S. Department of Energy, Federal Energy Management Measurement and Verification Guidelines (FEMP Guidelines).	
The Contractor will be responsible for the payment of all taxes, including without limitation real and personal property taxes. The Town may consider a payment in lieu of taxes (PILOT).	
The Contractor will be responsible for interfacing with the local utility company for all matters required for the interconnection to the grid (e.g., metering, protection, extension of distribution lines for connecting the solar facility to the grid). The Contractor will lead efforts to apply for interconnection and net metering (Interconnection Service Agreement, Schedule Z, Cap Allocation) at no cost to the Town.	
The negotiated solar EMS agreement shall contain a written guarantee of the Contractor that either the guarantee of on-site generation ("Guarantee of Generation") shall be achieved or the Contractor shall reimburse the Town for the shortfall amount, as well as the method to make the Town whole in the case of a Guarantee of Generation shortfall, to be determined annually.	
The Town shall require the selected Contractor to file a payment or performance bond relating to the installation of the PV system in an amount equal to 100% of the estimated contract value from a surety company licensed to do business in the commonwealth and whose name appears on U.S. Treasury Department Circular 570.	
In accordance with M.G.L. c. 71 Section 38R, the Town will request and obtain all available criminal offender information ("CORI") from the Criminal History Systems Board and all information maintained by the Sex Offender Registry Board pursuant to M.G.L. c. 6 Section 178K ("SORI") for any contractor who may have direct and unmonitored contact with children. The Contractor shall require all individuals, whether employees, agents, contractors or others working on behalf of Contractor, who are involved in the Project to complete and sign a Request Form to obtain CORI if, in the determination of the Town, some or all of the employees, contractors, agents or others working on behalf of the Contractor may have direct and unmonitored contact with children during the performance of the Project. The outcome of any CORI/SORI review shall be binding.	
The Contractor, subcontractor(s), and employees for the project shall possess certifications and/or licenses as required by the Commonwealth of Massachusetts.	

Specifications and Other Conditions	Accepts (Y/N)
The Contractor agrees not to discriminate against any employee or applicant for employment, to be employed in the performance of the solar EMS agreement, with respect to hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment, because of age, sex, race, color, religion, national origin, or ancestry.	
The Contractor shall be fully responsible to the Awarding Authority for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by the Contractor, as it is for the acts and omissions of persons directly employed by it. Nothing contained in this Agreement shall create any contractual relation between any subcontractor and the Awarding Authority.	
The Contractor is required to pay prevailing wage rates for all employees involved in providing contract services, as determined by the Department of Labor Standards (M.G.L c149, s.26 to 27H). For inquiry and clarification of prevailing wage laws, contact DLS.	
The Contractor shall perform its obligations hereunder in compliance with any and all applicable federal, state, and local laws, rules, and regulations, including applicable licensing requirements, in accordance with sound engineering and safety practices, and in compliance with any and all reasonable rules of the Town relative to the premises. The Contractor shall be responsible for obtaining all governmental permits, consents, and authorizations as may be required to perform its obligations hereunder.	
The Contractor shall use only new, unused equipment, including a revenue-quality meter. The Contractor shall provide a Data Acquisition System (DAS) with real-time access to production data.	
The Contractor will address both onsite usage of power by the Town and net metering of the excess energy (to the extent requested by the Town and permitted by law) to maximize the economic benefits to the Town.	
The Respondent acknowledges the Awarding Authority's preference for a solar EMS contract without any shifting of risk for changes in law (e.g., Solar Carve-Out Program) to the Awarding Authority.	

## 6.5 Response Form Template

*Respondents are encouraged to provide a response that specifically addresses each of the items below. The Town of Hamilton looks favorably upon responses that provide thorough, detailed responses and follow the format below.*

### **Executive Summary**

Provide an executive summary introducing the Respondent and identifying and introducing all known subcontractors. Include in this summary the site(s) applicable to the Response (Hamilton landfill, Hamilton Public Safety Building, Hamilton/Wenham Public Schools).

#### **i. Management & Performance Capabilities**

- a) Describe the general reputation and performance capabilities of the project team and explain how these characteristics translate to providing a solar EMS that best meets the Town's goals of maximizing the total energy cost savings (\$) to the Town for this project, as outlined in this RFQ.
- b) Provide a list of entities that comprise the project team, including the Respondent, all known subcontractors, and identify each party's role. Describe any history of collaboration.
- c) Provide the number of full-time personnel employed by the Respondent and approximate number of personnel to be providing services.
- d) Describe the Respondent's proximity to the Town of Hamilton, and how this will influence the Respondent's ability to perform construction, installation, ongoing operations and maintenance, and emergency response.
- e) Provide resumes of key project team members, including the anticipated day-to-day project manager. Resumes should highlight technical and/or economic expertise.

#### **ii. Experience & Project References**

- a) Describe relevant project team experience in and capabilities to provide the services requested in this RFQ. Summarize the relevant experience of the party(ies) responsible for the following:
  - a. Design & Engineering
  - b. Permitting
  - c. Installation
  - d. Operations & Maintenance
- b) Identify the number of MW (DC) capacity that the respondent has developed: (1) in total, (2) in Massachusetts, and (3) for Massachusetts municipal entities. If providing numbers for more than one firm on the project team, provide numbers per firm.
- c) For the party(ies) responsible for design work, describe their experience designing projects similar in scope to this project.
- d) Describe the experience the Respondent has had with large-scale, ground-mounted solar photovoltaic installations, particularly compost facility or landfill sites.
- e) For the party(ies) responsible for permitting work, describe their experience permitting projects similar in scope to this project, including landfill post-closure use permitting.

- f) For the party(ies) responsible for installation work, describe their experience installing projects similar in scope to this project.
- g) For the party(ies) responsible for the maintenance of the PV system(s) over the life of the contract, describe their experience maintaining projects similar in scope to this project.
- h) Provide detailed project information for three (3) reference projects of comparable scope to this project that Respondent has implemented within the last five (5) years. If possible, please highlight any examples of projects in the Northeast, and if possible, specifically in Massachusetts. For each reference project, please provide the following:
  - a. Location
  - b. System capacity
  - c. Current status (pre-construction, in construction, operation, etc.)
  - d. Customer name and contact information. *It is understood that the Awarding Authority may contact any or all of the above references regarding the project and personnel performance as part of the RFQ submittal review process.*
- i) In addition to standard PV system applications (e.g., rooftop, landfill), the Town may also be interested in alternative system applications, such as parking lot structures. Summarize your firm's expertise with any alternative system applications. *[No additional points will be awarded for experience with alternative applications.]*

### iii. Project Approach

- a) Please prepare a preliminary project approach with the following:
  - a. System capacity (kW DC)
  - b. Estimated output (kWh), Year 1
  - c. Describe the design considerations the Respondent has used to maximize the expected amount of solar electricity produced for each site, including equipment selection, shading, spacing, azimuth, tilt and inter-row shade spacing.
  - d. Discuss proposed the mounting system.
- b) What engineering studies will the Respondent, if selected, conduct to design the system and prepare a price proposal? Summarize the level and depth of the information and resources that will be required of the Town during the engineering studies.
- c) Discuss any assumptions and risks associated with completing the project due to net metering caps. The Awarding Authority prefers a solar EMS contract that includes a method for minimizing the Town's net metering regulatory risk; propose one or more strategies for reducing this risk that could be included in a *financeable* solar EMS agreement. If providing such an assurance is not possible for the Respondent (and/or anticipated financing partners), explain why.
- d) Describe complexities that are unique to permitting solar projects on compost facility and landfill sites and how the Respondent proposes to address these challenges. Explain the steps the Respondent will take to ensure permitting for this project can be completed in a timely manner.
- e) Describe the Respondent's project management protocols used to ensure schedule adherence and timely completion of the Projects, including your proposal for posting liquidated damages for delays and performance shortfalls.
- f) What quality assurance and commissioning procedures will you follow to ensure the system design and installation meets all applicable building and electrical codes?

- g) Summarize Respondent's operations and maintenance protocol, including work ensuring that equipment warranties and maintenance records are maintained and the requirements of the performance guarantee for savings is met.
- h) Summarize the investment that the Respondent is willing to make in this project while the parties are negotiating an EMS agreement in good faith. Identify any studies or processes that the Respondent is willing to start or complete during this time (e.g., prepare system design, submit interconnection application, conduct engineering assessments, prepare and submit permits), and the approximate investment (e.g., est. value) that the Respondent is willing to make in each task under these conditions.
- i) Statement on Time for Performance of Contract
  - a) Briefly summarize the estimated timeline for any project(s) to be developed pursuant to this RFQ, including the duration of the contract.
- j) Solar EMS Agreement
  - a) Provide a preferred template solar EMS agreement for the Town's consideration.

#### **iv. Method for Guaranteeing Electricity Generation & Determining Savings**

*Note: Methods for monitoring, measurement, and verification of guaranteed energy shall conform to the most recent Performance Measurement & Verification Protocol (IPMVP) and standards established by the Federal Energy Management Program of the U.S. Department of Energy.*

- a) Describe preferred methodology for setting a guaranteed output (e.g., guaranteed output = 100% of expected annual output). Please note that the Town expects the selected Respondent to agree to a generation guarantee.
- b) Describe Respondent's methodology for calculating any shortfall payments. Include any cap on shortfall payments required or preferred by Respondent or Respondents' anticipated financing partners.
- c) Describe the procedure to assign dollar values to the savings. List all assumptions, formulas and methodologies which Respondent uses to project anticipated energy savings.
- d) Describe Respondent's standard measurement and verification procedures, including reporting frequency, reconciliation methods, and timing. Please ensure that the M&V methods will be consistent with the most recent M&V guidelines from the Federal Energy Management Program (FEMP).

#### **v. Financing Capabilities**

- a) Describe Respondent's Financing Plan including any assumptions and contingencies.
- b) List the party(ies) responsible for project finance and describe their experience financing projects similar in scope to this project.
- c) Provide a description of Respondent's approach to financing the following aspects of the project(s) to be developed pursuant to this RFQ: (i) Development, (ii) Construction financing, and (iii) Take-out (term) financing.
- d) From the date of signing the EMS, please estimate the time required to secure and disburse construction financing funds.
- e) Provide a detailed description, and accompanying diagram, of the planned ownership structure.

- f) Has the party responsible for project finance ever failed to secure financing for a project under contract? If so, why?
- g) Detail any unique features that Respondent's approach to project finance offers. Provide general financing terms of a reference facility where the financial structure is similar to the proposed facility.
- h) Other than issuing the relevant project approvals and purchasing electricity generated per the EMS, what do you see as the Town's obligations? What conditions precedent will the Respondent or financial institutions require?
- i) Describe any other factors which would strengthen the credibility of the Respondent's financial capacity to undertake any project to be developed pursuant to this RFQ. "Other factors" could include corporate strategies which establish and fund reserves for contingent liabilities accruing from a growing portfolio of performance contracts, escrows, energy hedging, letters of credit, or other financial tools. "We have never had to fund a shortfall" is inadequate to strengthen the Respondent's financial credibility.
- j) Discuss whether your firm has ever been involved in a lawsuit or dispute regarding a performance contract. If so, please provide all such incidents and describe the circumstances and outcomes of such lawsuit or litigation. Further, please discuss whether your firm has been barred from providing performance contracting or other services in any states.
- k) Please submit a detailed audited financial report prepared in accordance with generally accepted accounting principles (GAAP) reflecting the current (as of the most recent financial statement date) financial condition of the Respondent. Such report must include a balance sheet, income statement and statement of cash flows, along with applicable footnotes, dated concurrently for at least each of the last preceding three years ending on the most recent fiscal quarter such statements were prepared. Public entities or subsidiaries should attach SEC Form 10-K along with, as applicable, detailed statements for the Submitting Entity. Non-public entities may attach either unaudited financial statements or copies of tax forms and schedules that are filed with the Internal Revenue Service where applicable. If the Respondent is a project company or LLC, provide such information regarding the financial resources of the owners or members of the Respondent.

**vi. Pricing Methodology**

- a) At what point in EMS contract negotiation process would the Respondent be willing to negotiate pricing with the Town? What qualifications would the Respondent need to put around that price?
- b) Summarize the level of transparency and granularity that the Respondent is willing to provide in negotiations. Provide examples of the specific costs and/or assumptions that the Respondent is willing to share with the Town. *[As indicated in the evaluation criteria herein, the most advantageous responses demonstrate Respondent's willingness to engage in transparent negotiations and include a detailed discussion of the degree of transparency and/or granularity that the Respondent is amenable to during negotiations.]*
- c) Briefly describe Respondent's anticipated strategy to maximize the SREC value (e.g., secure long-term contracts only, spot market).

- d) Does your approach to purchasing equipment and labor minimize installation costs? If so, how, and what degree of impact does it have?
- e) Discuss how your firm will allocate any financial impacts on proposed pricing caused by changes in financial incentives (availability of SRECs, reduction of federal and/or tax incentives, market value of carbon RECs, etc.)?
- f) Summarize Respondent's anticipated approach to maximize the value to the Town. For example, does the Respondent recommend taking advantage of a 100% virtual net metering approach and a lower SREC Factor, or does the Respondent recommend interconnecting behind existing meters at the project sites and taking a higher SREC Factor? If the Respondent recommends a 100% virtual net metering approach, how does the Respondent propose to mitigate net metering regulatory risk to the Town?
- g) Please describe any ancillary services that you will provide the Town. [Examples could include educational/curriculum materials or other educational opportunities (e.g., speaking events, site visits), real-time production displays, electric vehicle charging stations, private sector incentive rebates to Town (e.g., for each Hamilton area resident, business, or institution that uses Contractor to install solar PV within given time frame, Contractor will provide incentive payment to Town).]

## 6.6 Response Evaluation Form

A summary of the Response evaluation process and evaluation criteria appear in Section 4 of this RFQ.

Evaluation Form			
Minimum Required Item	Included? (Y/N)		
Completed Respondent Information Form			
Certificate of Non-Collusion			
Attestation Regarding Filing of Tax Returns			
Completed Specifications and Other Conditions Checklist			
Response in format of Response Form Template, including:			
• References of other Energy Savings Contracts, if available			
• Statement on Quality of Products to be Used if Awarded Contract			
• Methodology of Energy Savings			
• Evidence of General Reputation and Performance Capabilities			
• Statement on Time for Performance of the Contract			
DCAMM Certificate of Eligibility and Update Statement			
Adhered to Format and is Complete			
Response Subsection	Unacceptable	Not Advantageous	Advantageous
Management & Performance, Experience, and Project References (20%)			
Project Approach (20%)			
Method for Guaranteeing Electricity Generation & Determining Savings (20%)			
Financing Capabilities (20%)			
Pricing Methodology (20%)			
Average Rating			





## **6.7 Site Plan & Memorandum on Hamilton Landfill PV Array**

The 12.7 acre Hamilton Landfill is located off Chebacco Rd in Hamilton, MA. Available records indicate it was active from 1950 to 1983. The landfill is currently in the final stages of obtaining a MassDEP closure permit before applying for a Post-Closure Use permit. The Corrective Action Design drawings, prepared by CDM Smith, are included in this RFP as an appendix.

Attached is CDM Smith's Corrective Action Design for the landfill. The final closure package is expected in the next few months.

**TOWN OF HAMILTON, MASSACHUSETTS**  
**HAMILTON LANDFILL CLOSURE PROJECT**

**CORRECTIVE ACTION DESIGN**

**TOWN MANAGER**

MICHAEL A. LOMBARDO

**DEPARTMENT OF PUBLIC WORKS**

DAVID HANLON, DIRECTOR

**OCTOBER 2013**



LOCATION PLAN



**CDM  
Smith**

**CAMBRIDGE, MASSACHUSETTS**

**Water**

**Environment**

**Transportation**

**Energy**

**Facilities**

**LIST OF DRAWINGS**

SHEET	TITLE
C-1	EXISTING CONDITIONS PLAN
C-2	SUBGRADE PLAN
C-3	FINAL GRADING PLAN
C-4	LANDFILL CAP AND CORRECTIVE ACTION LOCUS PLAN
D-1	LANDFILL CLOSURE DETAILS II
D-2	LANDFILL CLOSURE DETAILS II









**LEGEND**

**EXISTING CONDITIONS**

- APPROXIMATE PROPERTY LINE
- INTERMITTENT STREAM
- 2007 SURVEY MAJOR CONTOUR
- 2007 SURVEY MINOR CONTOUR
- HAMILTON LANDFILL MONITORING WELL
- 2012 SURVEY MAJOR CONTOUR
- 2012 SURVEY MINOR CONTOUR
- EDGE OF WETLANDS
- 400' ZONE A PROTECTION AREA
- EXISTING GRAVEL ROAD

**PROPOSED CONDITIONS**

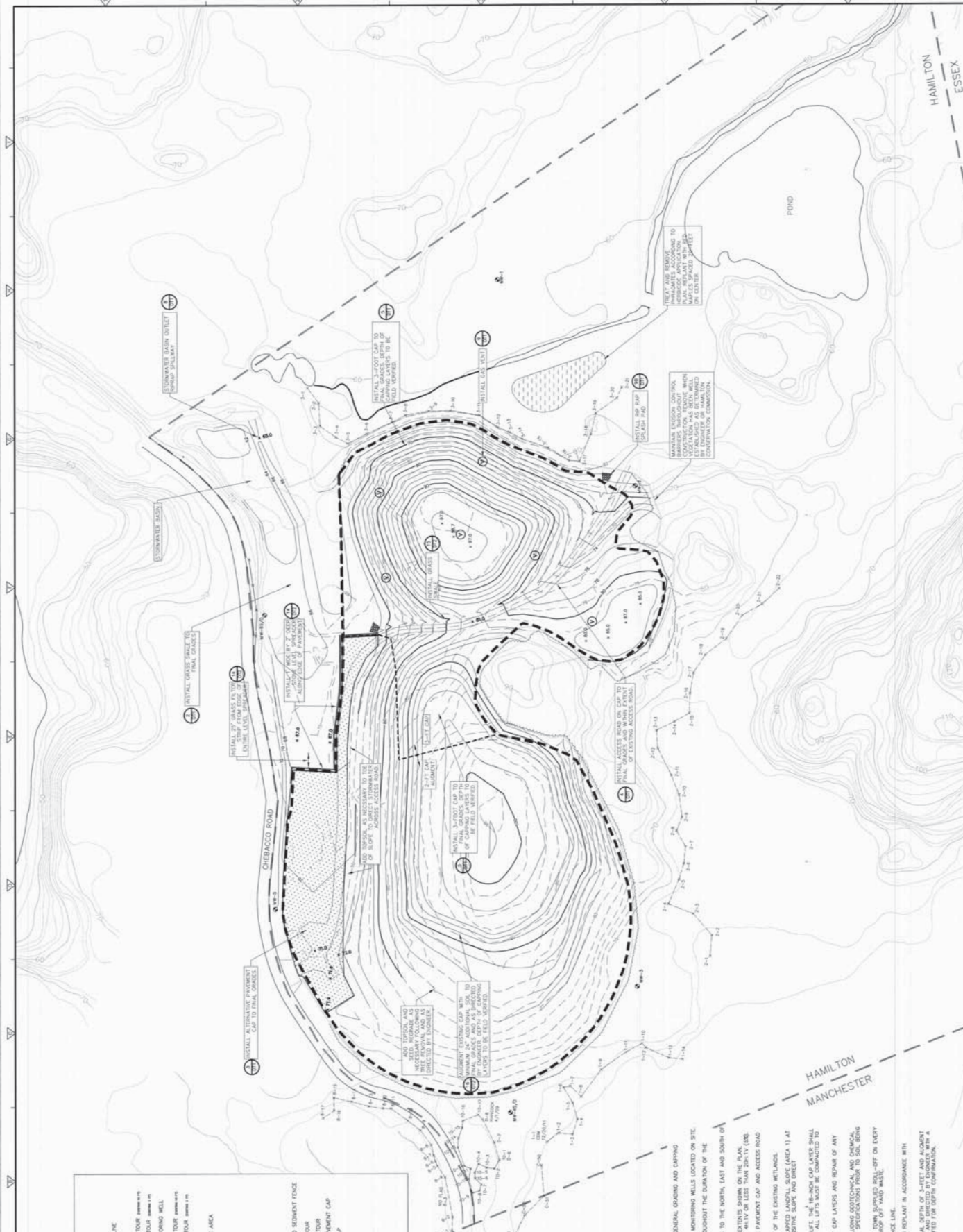
- PROPOSED HATCHES AND SEMENT FENCE
- PROPOSED 2' FINAL CONTOUR
- PROPOSED 10' FINAL CONTOUR
- LIMIT OF ALTERNATIVE PAVEMENT CAP
- LIMIT OF 3-FOOT SOIL CAP
- FINAL LIMIT OF WASTE
- PROPOSED GAS VENT

1" = 50'

GENERAL NOTES: SEE SHEET C-1

**CONSTRUCTION NOTES:**

- SEE SHEET C-1 FOR ADDITIONAL CONSTRUCTION AND GENERAL GRADING AND CAPPING NOTES.
- CONTRACTOR SHALL PRESERVE AND PROTECT EXISTING MONITORING WELLS LOCATED ON SITE.
- CONTRACTOR SHALL MAINTAIN EROSION CONTROLS THROUGHOUT THE DURATION OF THE PROJECT.
- THE SITE MUST BE PROTECTED FROM OVERSIGHT WETLANDS TO THE NORTH, EAST AND SOUTH OF THE SITE.
- CONTRACTOR SHALL INSTALL SOIL CAP LAYERS TO THE EXTENTS SHOWN ON THE PLAN. CAPPED AREAS SHALL NOT BE SLOPED GREATER THAN 4:1 V OR LESS THAN 20% (3%)
- CONTRACTOR SHALL TRANSITION BETWEEN ALTERNATIVE PAVEMENT CAP AND ACCESS ROAD
- SOIL CAP SHALL NOT BE INSTALLED WITHIN THE LIMITS OF THE EXISTING WETLANDS.
- CONTRACTOR SHALL USE TOPSOIL TO GRADE USE OF CAPPED LANDFILL SLOPE (AREA 1) AT EDGE OF ALTERNATIVE PAVEMENT CAP TO MAINTAIN POSITIVE SLOPE AND DRAIN STORMWATER ACROSS ACCESS ROAD.
- SOIL CAP SHALL BE INSTALLED IN TWO LAYERS IN ONE LIFT. THE SOIL CAP LAYERS SHALL BE A MINIMUM OF 3-FOOT COMPACTED.
- CONTRACTOR SHALL BE RESPONSIBLE FOR MONITORING DRAINAGE OF CAP LAYERS AND REPAIR OF ANY EROSION OR COLLAPSE.
- CONTRACTOR SHALL SUBMIT SOURCE INFORMATION INCLUDING GEOTECHNICAL AND CHEMICAL TESTING RESULTS OF ALL SOIL USED ON SITE FOR THE SPECIFICATIONS PRIOR TO SOIL BEING USED.
- CONTRACTOR TO PROVIDE ACCESS TO AND SPACE FOR DUNE SUPPLIED ROLL-OFF ON EVERY LAST WEDNESDAY OF THE MONTH FOR RESIDENTS TO DROP OFF YARD WASTE.
- CONTRACTOR TO PRESERVE AND PROTECT EXISTING FENCE LINE.
- CONTRACTOR TO TREAT AND REMOVE INTRUSIVES AND REPLANT IN ACCORDANCE WITH ORDER OF CONDITIONS.
- CONTRACTOR TO TREAT AND REMOVE INTRUSIVES AND REPLANT IN ACCORDANCE WITH ORDER OF CONDITIONS.
- THE EXISTING CAP IN AREA AS SHOWN ON THE PLAN AND DIRECTED BY FINDER WITH A MINIMUM OF 3-FOOT. ALL LAYERS WILL BE FIELD CHECKED FOR DEPTH CONFORMANCE.



PROJECT NO.	044-0004
DATE	01/15/2013
SHEET NO.	C-3

**TOWN OF HAMILTON, MASSACHUSETTS**

**LANDFILL CLOSURE PROJECT**

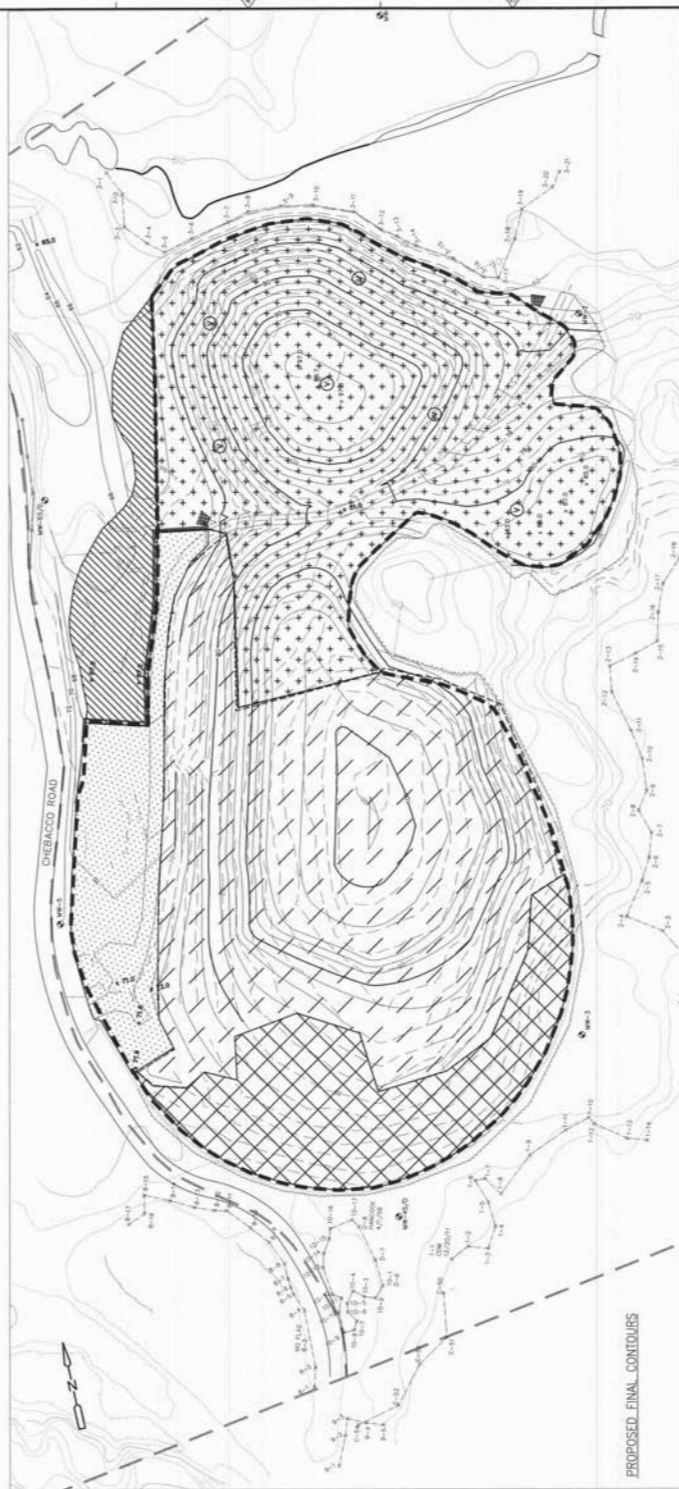
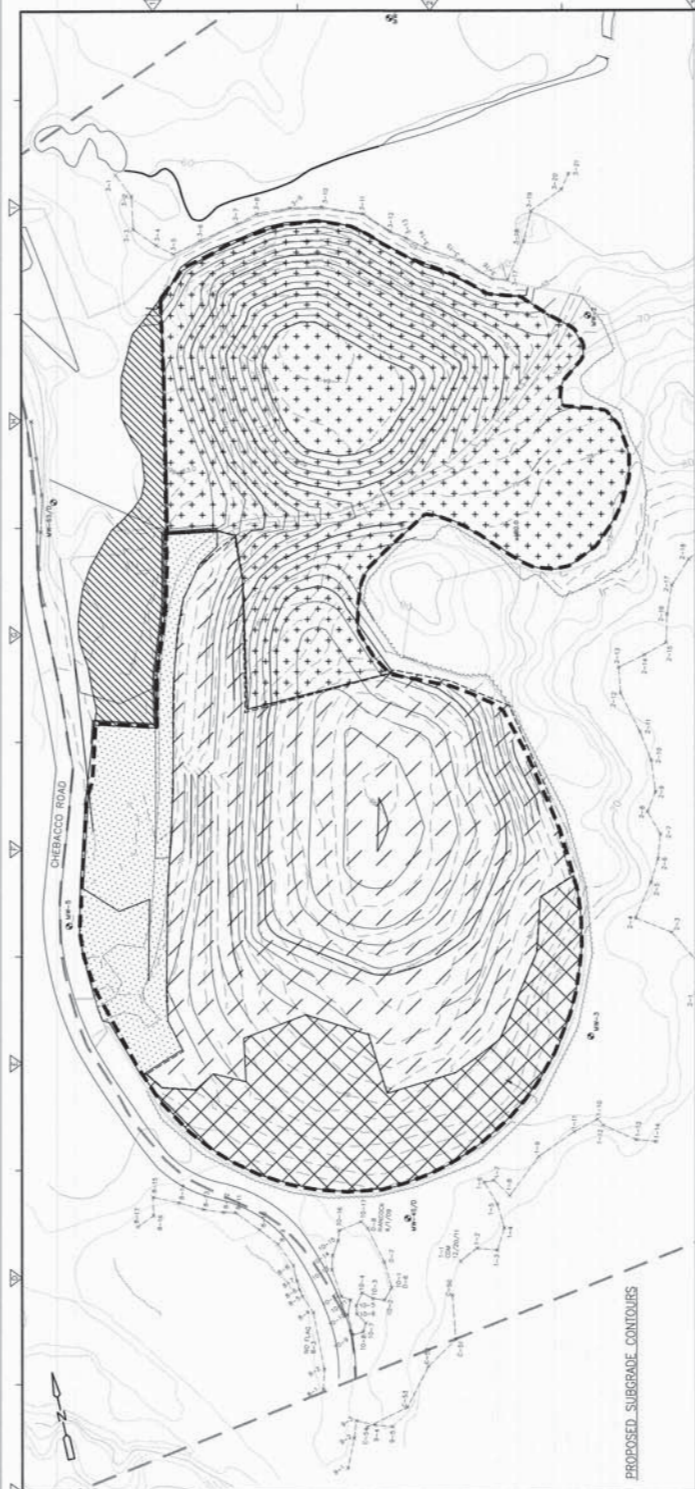
**FINAL GRADING PLAN**

CDM Smith

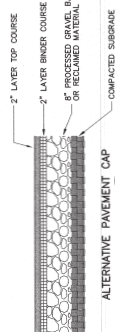
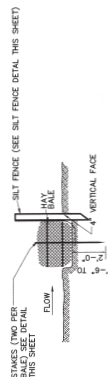
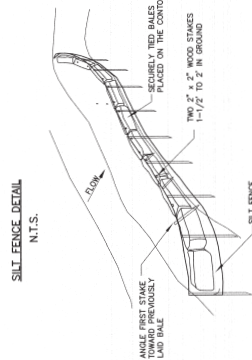
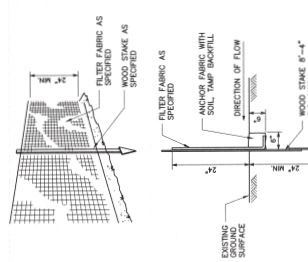
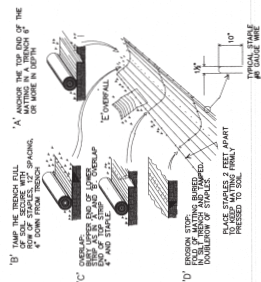
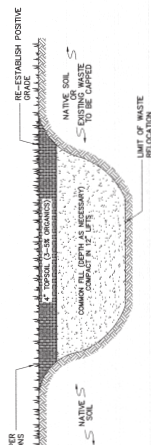
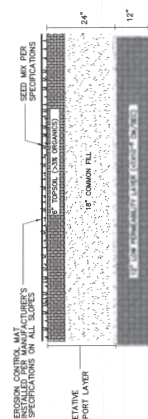
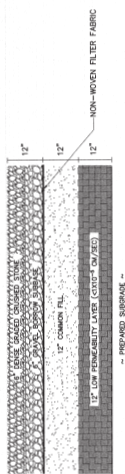
APPROVED BY: [Signature]

DATE: 01/15/2013









1. WASTE AND EXISTING SOIL TO BE REMOVED AND RELOCATED ON SITE TO MEET FINAL GRADES.

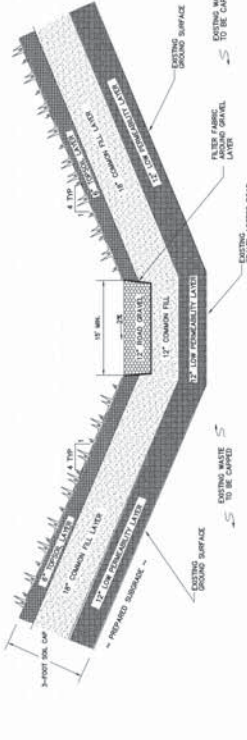
**CDM Smith**  
30 Harpham Street  
Cambridge, MA 02139

TOWN OF HAMILTON, MASSACHUSETTS  
LANDFILL CLOSURE PROJECT

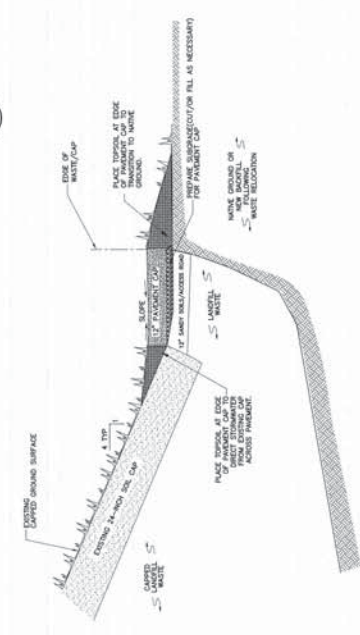
LANDFILL CLOSURE DETAILS

PROJECT NO.	0644-89026
FILE NAME:	CSTD0001
SHEET NO.	

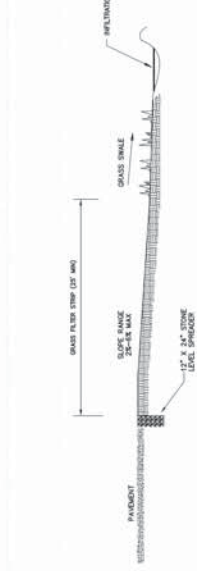




AREA 2 TOE OF SLOPE  
DETAIL 10  
NOT TO SCALE



GRAVEL ACCESS ROAD AND SOIL CAP TRANSITION  
DETAIL 11  
NOT TO SCALE

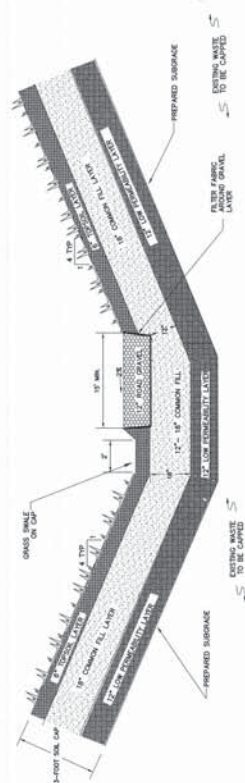


GRAVEL ACCESS ROAD AND PAVEMENT CAP TRANSITION  
DETAIL 12  
NOT TO SCALE

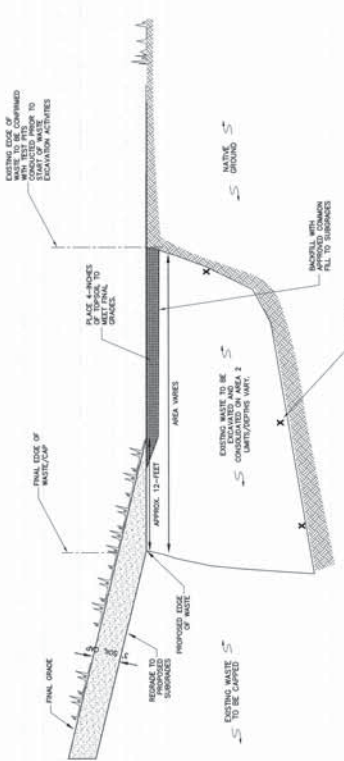
VEGETATED FILTER STRIP AND STONE LEVEL SPREADER  
DETAIL 14  
NOT TO SCALE



PROPOSED 2-FOOT CAP AUGMENTATION  
DETAIL 16  
NOT TO SCALE



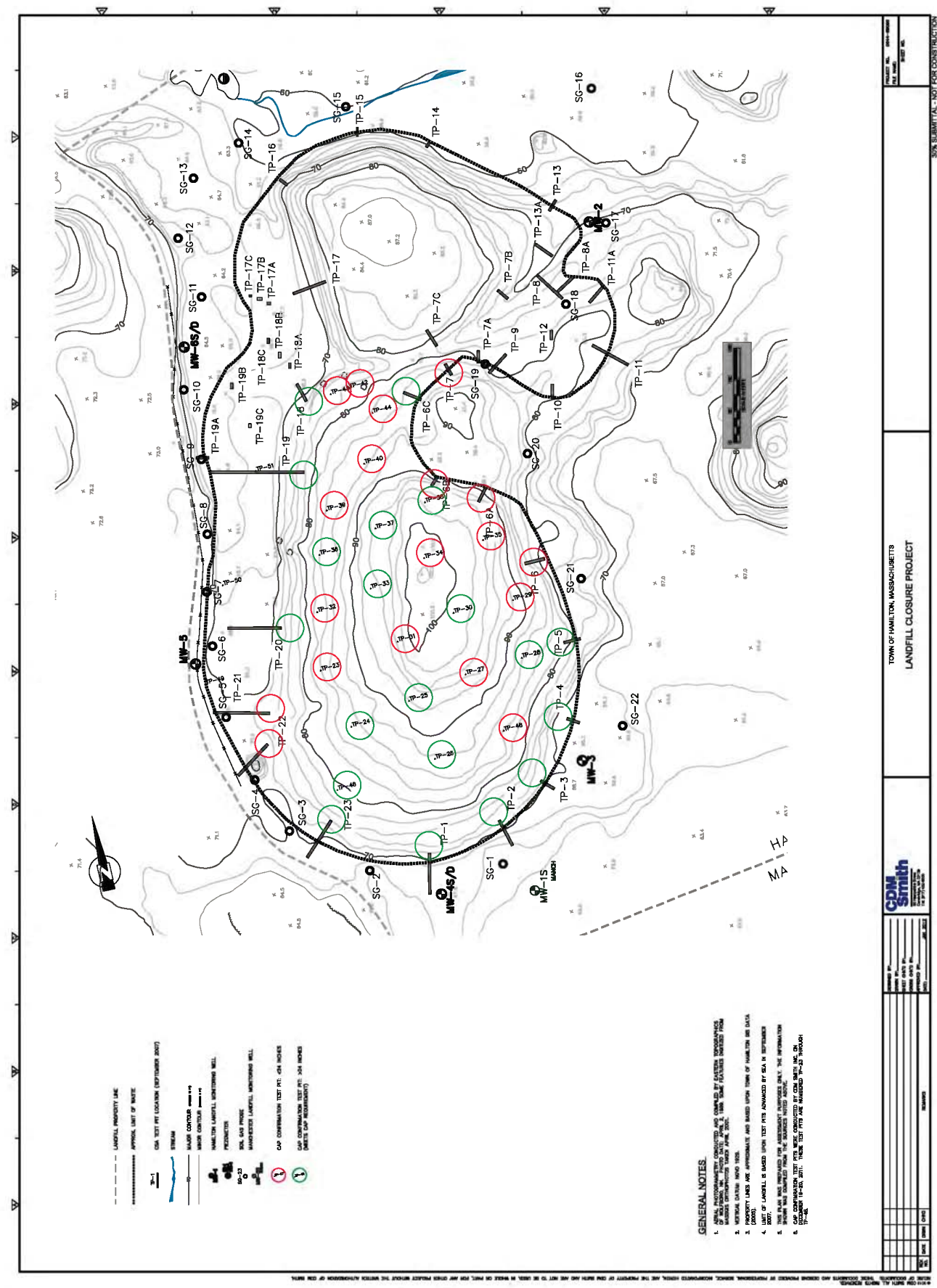
GRAVEL ACCESS ROAD, GRASS SWALE AND SOIL CAP TRANSITION  
DETAIL 15  
NOT TO SCALE



AREA 2B WASTE RELOCATION TRANSITION  
DETAIL 13  
NOT TO SCALE

## **Attachment B**

### **Test Pit Plan**



GENERAL NOTES

1. ALL INFORMATION CONTAINED HEREIN IS THE PROPERTY OF GCM SMITH, INC. AND IS NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF GCM SMITH, INC.
2. THESE TEST PITS ARE BASED UPON THE DATA PROVIDED BY THE CLIENT.
3. PROPERTY LINES ARE APPROXIMATE AND BASED UPON THE DATA PROVIDED BY THE CLIENT.
4. THE LIMIT OF LANDFILL IS BASED UPON TEST PITS ADVANCED BY GCM IN SEPTEMBER 2007.
5. THE DATA WAS OBTAINED FROM THE CLIENT'S RECORDS AND IS NOT A FIELD SURVEY.
6. THE INFORMATION CONTAINED HEREIN IS NOT TO BE USED FOR ANY PURPOSE OTHER THAN THAT FOR WHICH IT WAS PROVIDED.
7. THE INFORMATION CONTAINED HEREIN IS NOT TO BE USED FOR ANY PURPOSE OTHER THAN THAT FOR WHICH IT WAS PROVIDED.

TOWN OF HAMILTON, MASSACHUSETTS		LANDFILL CLOSURE PROJECT	
PROJECT NO. 0001-0000		SHEET NO. 001	
DATE: 09/20/07		SCALE: AS SHOWN	
DRAWN BY: J. SMITH		CHECKED BY: J. SMITH	
DATE: 09/20/07		DATE: 09/20/07	

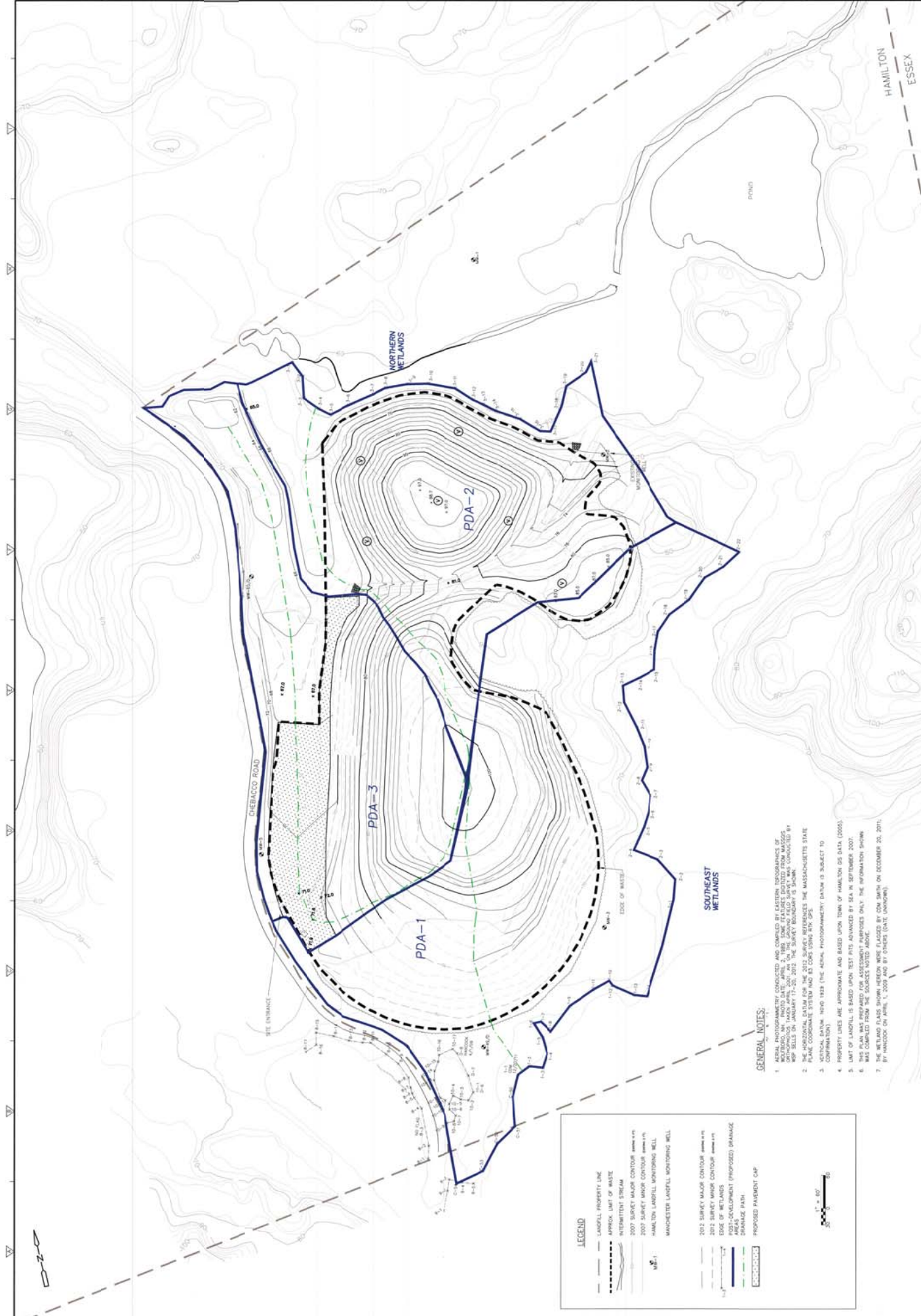
50% SUBMITTAL - NOT FOR CONSTRUCTION

## **Attachment C**

### **Stormwater Plans**







- GENERAL NOTES:**
1. AERIAL PHOTOGRAPHY CONDUCTED AND COMPILED BY EASTERN TERRACONICS OF WESTPORT, MA, IN 2007. DATE: APRIL 2, 2009. SOME FEATURES DERIVED FROM MASSGIS DATA. THE HORIZONTAL DATUM FOR THE 2007 SURVEY REFERENCES THE MASSACHUSETTS STATE PLANE COORDINATE SYSTEM NAD 83 COGS USING 87K GPT.
  2. THE HORIZONTAL DATUM FOR THE 2007 SURVEY REFERENCES THE MASSACHUSETTS STATE PLANE COORDINATE SYSTEM NAD 83 COGS USING 87K GPT.
  3. VERTICAL DATUM: NAVD 1989 (THE AERIAL PHOTOGRAPHY DATUM IS SUBJECT TO CORRECTION).
  4. PROPERTY LINES ARE APPROXIMATE AND BASED UPON TOWN OF HAMILTON GIS DATA (2005).
  5. LIMIT OF LANDFILL IS BASED UPON TEST PITS ADVANCED BY SEA IN SEPTEMBER 2007.
  6. THE 2007 SURVEY MAJOR AND MINOR CONTOURS WERE DERIVED FROM THE INFORMATION SHOWN ON THE 2007 SURVEY MAPS. THE 2007 SURVEY MAPS WERE CONDUCTED BY CDM SMITH ON JANUARY 17-20, 2007. THE SURVEY BOUNDARY IS SHOWN.
  7. THE WETLAND PLAYS SHOWN HEREON WERE FLAGGED BY CDM SMITH ON DECEMBER 20, 2011, BY HAND ON APRIL 1, 2009 AND BY OTHERS (DATE UNKNOWN).

PROJECT NO. 0444-0007		SHEET NO. 1		FIGURE 2	
TOWN OF HAMILTON, MASSACHUSETTS					
LANDFILL CLOSURE PROJECT					
POST-DEVELOPMENT DRAINAGE AREA PLAN					
DRAWN BY: _____ CHECKED BY: _____ DESIGNED BY: _____ DATE: _____					

## 6.8 Hamilton Optional Site Information and Energy Consumption

Town of Hamilton  
Electricity Use/Cost Table  
FY14 & 15

Site Name	Account Address	Occupancy	Size	Facility Category		Energy Consumption (kWh)	
		Hours of Daily Occupancy	Square Feet	Surface	Age (Yrs.)	FY2014	FY2015
Hamilton Town Manager*	577 Bay Road	10	4,975	Roof	20	1,145,137	1,132,938
Hamilton Police Department	265 Bay Road	24	21,968	Roof	15	261,800	257,000
Cutler School	237/243 Ashbury Street	10	48,011	Roof	12	169,526	175,604
Winthrop Elementary	325 Bay Road	10	58,251	Roof	15	270,360	256,160

### Permitting Requirements:

All potential PV systems on the Town rooftops listed above are contingent on obtaining a building and electrical permit.

Site Name	Account Address	Additional Permits Required
Hamilton Town Hall	577 Bay Road	No non-ministerial permits
Hamilton Police Department	265 Bay Road	No non-ministerial permits
Cutler School	237/243 Ashbury Street	No non-ministerial permits
Winthrop Elementary	325 Bay Road	No non-ministerial permits

\*Hamilton notes that this site is included in order to demonstrate the Town's appetite for net metering credits to be generated at the landfill.

## **6.9 Model DOER Energy Management Service Agreement**



# Model EMS Contract

INSTRUCTIONS FOR USE OF  
MODEL CONTRACT  
FOR COMPREHENSIVE PROJECT  
UNDER BOTH  
225 CMR 10.00 AND 225 CMR 19.00

## **ACKNOWLEDGEMENTS**

This document was prepared by Eileen McHugh, Program Coordinator (DOER). DOER would like to thank Robert Sydney, former General Counsel (DOER); Rachel Evans, Deputy General Counsel (DOER); Natalie Andrews, former Renewable Energy Project Coordinator (DOER); Beth Greenblatt, Managing Director, Beacon Integrated Solutions; and the Energy Services Coalition for their contribution to this document.

## **Disclaimer**

This document is a model Energy Management Services Agreement (Contract) with provisions to use in procuring Energy Management Services (EMS) for comprehensive projects under 225 CMR 10.00 or 225 CMR 19.00. The information contained within is general and subject to change. The document is not intended to provide legal advice; it is intended to serve as an introduction to the elements pertaining to the development of an EMS project and should not be used as a substitute for a thorough analysis of facts and the law. When procuring for EMS, it is the sole responsibility of each governing body to consult with legal counsel in preparing any documents and to ensure compliance with all applicable federal, state, and local laws, rules, regulations, and procurement procedures.

The users of this document are strongly encouraged to search actively for the most recent updates of governmental regulations. Readers may check for recent updates to Energy Management Services at [www.mass.gov/doer](http://www.mass.gov/doer) or by calling (617) 626-7305.

This model Contract contains provisions for the installation of Energy Conservation Measures and Energy Conservation Projects under 225 CMR 10.00 and 225 CMR 19.00.

All Contracts must be submitted to DOER as detailed below.

Draft version 7/2/14

1. Use this model Contract as a foundation for the solicitation. The document is intended as guidance to ensure compliance with the statute and the regulation.
2. Change the Contract to fit the specific procurement. For example, adding details applicable to the particular project or standard language required by the awarding authority.
3. A Local Governmental Body shall only award a contract for EMS if all the requirements of 225 CMR 10.00 or 225 CMR 19.00 have been met. At least 15 Business Days prior to execution of an EMS contract, the Local Governmental Body shall file with DOER a final copy of the contract along with DOER's EMS Annual Report with projected energy and water cost savings estimates. To file EMS documents with the DOER, email one complete electronic copy to: EMS.DOER@state.ma.us and mail one complete copy to:

Massachusetts Department of Energy Resources  
Attn: NOTIFICATION OF EMS PROCUREMENT  
100 Cambridge St., Suite 1020  
Boston, MA 02114

Include the name of the Local Governmental Agency (LGA), the physical address, the name and contact information for the Chief Procurement Officer, if applicable, or an alternative local governmental official with equivalent responsibilities and authority, and the current phone number & email address for the person responsible for the Contract. DOER will notify the LGA if the contract meets all the requirements.

Within 15 Business days after the contract is executed, the Local Governmental Body shall file an electronic copy of the executed contract with the Commissioner of DOER under the terms of EMS Contract Submission Guideline.

### **Energy Management Services (EMS)**

EMS provides for a program of services, including Energy Audits, Energy Conservation Measures, Energy Conservation Projects or a combination thereof, and building maintenance and financing services, primarily intended to reduce the cost of energy and water in operating public buildings. This method provides for a limited exemption from M.G.L. c.149 for construction. Elements of the EMS contract include:

- Construction and installation terms to implement the projects identified (and later negotiated) in the investment grade audit report including all labor and material costs.
- Long-term provisions for guaranteed energy and water cost savings that typically meet the annual lease-purchase payments or debt payments.
- Long-term provisions to monitor and verify performance plus any additional annual fees related to the project.
- A financing agreement with a financial client is signed at the same time, unless other funding arrangements are made

#### Savings Guarantee

- Energy and water efficiency savings guarantees
- Baseline energy consumption
- Efficiency savings measurement and verification plan; methodology to adjust baseline

#### Payments and Schedule

- Final project cost and project cash flow analysis
- Financing agreement and payment schedule
- Compensation to ESCO for annual services

#### Construction Phase

- Description of project sites

- Equipment to be installed by ESCO (labor and materials)
- Construction and installation schedule
- Systems start-up and commissioning; operating parameters of installed equipment
- Standards of comfort
- ESCO's training responsibilities

#### Post-Construction

- Guaranteed energy savings measurement and verification
- ESCO's maintenance responsibilities
- Client's maintenance responsibilities
- Facility maintenance checklist

#### Administration

- Annual reporting requirements

The model contract begins on the next page

# Model Energy Management Services Agreement

## PREAMBLE

This Energy Management Services Agreement (hereinafter “Agreement”) is made and entered into as of \_\_\_\_\_ (“**Effective Date**”) by and between \_\_\_\_\_ (hereinafter “**Contractor**”), a \_\_\_\_\_ based Corporation having its principal offices at \_\_\_\_\_, and \_\_\_\_\_ (hereinafter the “**Owner**”), having its principal offices at \_\_\_\_\_ (address), for the purpose of furnishing certain equipment and work specified herein (“**Work**”), and assuring the performance of said Work, for design, construction, guarantee, and follow-up measurement and verification of energy savings. The project will improve thermal efficiency, conserve energy, conserve water, reduce waste water, and, when specified, generate electrical power at Owner properties included in the RFP.

## SECTION 1: DEFINITIONS

Key terms used within this Agreement are defined as follows:

Adjusted Energy Baseline. An energy baseline adjusted to compensate for factors that would have changed energy consumption in the absence of any energy conservation measures, such as increases or decreases in conditioned or illuminated space, changes in occupancy or building use, facility renovation, or extremes in weather.

Business Day. A business day shall mean Monday through Friday, exclusive of state and federal legal holidays.

Commissioning. The process for achieving, verifying, and documenting the performance of the energy and water conservation measures to meet the operational capabilities of the project as designed including documentation of checklists, systematic functional testing of equipment and systems, oversight of training for operations and maintenance staff, and follow-up on any warranty issues.

DCAM. The Division of Capital Asset Management and Maintenance, established by M.G.L. c. 7, § 4A.

DOER. The Department of Energy Resources, established by M.G.L. c. 25A, §1.

EMS Annual Report. A report form required by DOER that must be completed by the Local Governmental Body summarizing the energy or water unit and dollar cost savings. The initial report providing estimated savings must be filed along with the EMS contract and thereafter within 90 days after the anniversary of the Guaranteed Energy Performance Period.

Energy Audit. A systematic inspection, verification, and determination of the energy consumption characteristics of a building or facility which:

- (a) identifies the type, size, and rate of energy consumption of such building or facility and the major energy using systems of such building or facility;
- (b) determines appropriate energy conservation maintenance and operating procedures; and
- (c) indicates the need, if any, for the acquisition and installation of Energy Conservation Measures or On-site Energy Generation.

Energy Conservation. A modification of, or change in, the operation of real or personal property in a manner likely to improve the efficiency of energy use, and shall include Energy Conservation Measures and any Energy Audits to identify and specify energy and cost savings.

## **Model Energy Management Services Agreement**

Energy Conservation Measures. Measures involving modifications of maintenance and operating procedures of a building or facility and installations therein, which are designed to reduce energy consumption in such building or facility, or the installation or modification of an installation in a building or facility, which is primarily intended to reduce energy consumption.

Energy Conservation Projects. Projects to promote Energy Conservation, including but not limited to energy conserving modification to windows and doors; caulking and weather stripping; insulation, automatic energy control systems; hot water systems; equipment required to operate variable steam, hydraulic and ventilating systems; plant and distribution system modifications, including replacement of burners, furnaces or boilers; devices for modifying fuel openings; electrical or mechanical furnace ignition systems; utility plant system conversions; replacement or modification of lighting fixtures; energy recovery systems; on-site electrical generation equipment using new renewable generating sources as defined in section 11F; and cogeneration systems.

Energy Management Services (EMS). A program of services, including Energy Audits, Energy Conservation Measures, Energy Conservation Projects or a combination thereof, and building maintenance and financing services, primarily intended to reduce the cost of energy and water in operating buildings, which may be paid for, in whole or in part, by cost savings attributable to a reduction in energy and water consumption that result from such services. The EMS contract may extend for a term not to exceed twenty years. The allowable length of the contract may also reflect the useful life of the cost savings measures.

Energy Savings. A measured reduction in fuel and its costs, energy and its costs, water and its costs, or operating or maintenance costs resulting from the implementation of Energy Conservation Measures or Projects; provided, however, that any payback analysis to evaluate the energy savings of a geothermal energy system to provide heating, cooling or water heating over its expected lifespan shall include gas and electric consumption savings, maintenance savings and shall use an average escalation rate based on the most recent information for gas and electric rates compiled by the Energy Information Administration of the United States Department of Energy.

Established Baseline. A written description of previous fuel, energy, and water consumption data and operating and maintenance costs for the past three years, including, but not limited to, future capital replacement expenditures avoided as a result of equipment installed or services performed. The description shall be included in the Request for Proposals.

Escalation Rate. The escalation rate is the rate of increase in price that is based on the most recent information for gas and electric rates compiled by the Energy Information Administration of the United States Department of Energy (see Energy Savings).

Estimated Energy Cost Savings. The Contractor-estimated energy cost savings in dollars per year for each Energy Conservation Measure (ECM), and equal the estimated energy savings multiplied by the established energy prices in appropriate units. For ECMs with multiple energy type impacts, energy cost savings equals the sum of the products of the energy savings by energy type and established energy prices.

Excess Savings. Actual savings realized that are over and above guaranteed savings.

FEMP. The Federal Energy Management Program.

Final Completion. Final Acceptance by the owner that the Contractor has fulfilled all of its obligations under the Contract including construction, installation, inspection, testing, measuring initial

## Model Energy Management Services Agreement

performance and commissioning, and that all punch list items are reconciled and subcontractors, laborers, and suppliers are paid in full.

**Guarantee of Generation.** The written guarantee of a Contractor warranting the particular electrical energy generation to be derived from the On-site Electrical Generation unit. Such written guarantee shall:

- (a) include a detailed description of the equipment to be installed; and
- (b) state the annual amount of electrical energy to be generated in kilowatt hours per year.

**Guarantee of Savings.** The written guarantee of a Contractor, warranting the energy savings to be derived from a particular Energy Conservation Measure, Energy Conservation Project, Energy Management Services, or Energy Savings. Such written guarantee shall include a detailed description of the cost of the energy or water conservation or usage measures, all causally connected work, and ancillary improvements provided for in the contract. The guarantee shall state the annual savings expressed in applicable energy units or (if water savings) in gallons per year and be based on dollars saved by reference to established unit rates.

**Guaranteed Energy Savings Contract.** A contract for the evaluation, recommendation or implementation of one or more energy management services in which payments are based, in whole or in part, on any energy savings attributable to the contract.<sup>1</sup>

**Guaranteed Maximum Cost.** The fixed maximum cost of the Energy Management Services, including:

- (a) the cost of each energy conservation measure, after installation, startup, and testing; and
- (b) the total payments made by a Local Governmental Body to a contractor, including but not limited to, the total capital investment and the contractor's costs. Utility sponsored rebates, tax credits or other incentives, any direct governmental subsidies, interest payments, and energy and water cost savings shall not be deducted from the Guaranteed Maximum Cost.

**Guaranteed Savings Year.** The 365 day period beginning on the Final Completion Date and each consecutive 365 day period thereafter during the contract period.

**Guidelines.** A set of clarifications, interpretations, and procedures, including forms and model documents, developed and issued by DOER to assist it in determining compliance with 225 CMR 10.00. Each Guideline shall be effective on its date of issuance or on such date as is specified therein, except as otherwise provided in 225 CMR 10.00 and 225 CMR 19.00.

**Implementation Period.** The implementation period is the period between the date the Agreement is executed to the date that all energy conservation measures (ECMs) are operational and accepted.

**Investment Grade Audit (IGA).** An Energy Audit that includes a detailed evaluation of the Energy Conservation Project cost, including but not limited to the investment opportunities for Energy Conservation Measures, operations and maintenance. The IGA shall provide a return on investment that represents an optimized bundle of short-term payback Energy Conservation Measures combined with long-term payback Energy Conservation Measures to meet Local Governmental Body Energy Savings and financial goals.

**Measurement and Verification (M&V).** The process of measuring and verifying the performance of the project to assure that guaranteed energy, water and related cost savings are being realized.<sup>2</sup>

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<sup>1</sup> Same as Energy Management Services Agreement or Contract

<sup>2</sup> See Federal Energy Management Program Measurement and Verification Guidelines [here](#)



## **Model Energy Management Services Agreement**

Notice to Proceed. Letter from an Owner to a Contractor stating the date the Contractor may begin the Work subject to the conditions of the agreement.

On-site Energy Generation. The generation of Renewable Energy or the cogeneration of electricity and heating or cooling of a generation unit located on or adjacent to a building or structure owned by a Local Governmental Body that utilizes some or all of the energy so generated either directly or indirectly through net metering, as defined in M.G.L. c 164, §138.

Payment Bond. A type of construction bond (bid, payment, and performance bonds) that provides assurance that specified subcontractors, laborers and suppliers associated with the project will be paid in the event of default by the contractor.

Performance Bond. A type of construction bond (bid, payment, and performance bonds) that provides protection from financial loss to the project owner should the contractor or subcontractor fail to perform according to the terms and conditions of the contract (not to be confused with “guaranteed performance”).

Punch List. A list of disputed energy conservation measures.

Renewable Energy. The electrical energy output of an RPS Class I Renewable Generation Unit, Solar Carve-Out Renewable Generation Unit, or Solar Carve-Out II Renewable Generation Unit as defined under 225 CMR 14.00: *Renewable Energy Portfolio Standards – Class I*.

Request for Proposals (RFP). A written document issued by a Local Governmental Body that invites potential Responsive Offerors to submit proposals outlining their qualifications to perform the Energy Management Services for the Local Governmental Body, a cost proposal, and other information required by 225 CMR 10.03(1) and (2) and the Local Governmental Body.

Request for Qualifications (RFQ). A written document issued by a Local Governmental Body that invites qualified providers to submit responses outlining their qualifications, the desire to perform the EMS for the Local Governmental Body, and other information required by 225 CMR 19.00 and the Local Governmental Body.

Substantial Completion Date. The date on which the Contractor warrants by written notice that the ECMs are substantially complete and producing savings equal to or greater than the guaranteed savings.

Shortfall. The deficiency in energy cost savings that the Contractor guaranteed and the actual savings in any one Guaranteed Savings Year.

## **SECTION 2: PRICE AND TERMS**

### **2.1 Agreement Price**

As payment for the Work, Owner shall pay Contractor a firm, fixed price for which the total maximum contract value is not to exceed \$\_\_\_\_\_ (“Guaranteed Maximum Cost”). To the extent that materials and supplies are used or incorporated in the performance of Agreement, the Contractor is considered an exempt purchaser under the Massachusetts Sales Act, Chapter 14 of the Acts of 1966. Contractor shall be responsible for paying all other taxes and tariffs of any sort related to the Work. This Agreement is conditional upon the Owner obtaining financing from a regulated lender or municipal lessor in an amount not less than the Agreement Price under such terms as are satisfactory to the Owner, provided Owner shall diligently pursue such financing and such terms are customary, reasonable and in compliance with pertinent laws and regulations.

## Model Energy Management Services Agreement

### 2.02 Payment Terms

- a) Initial Payment: Upon receiving funds from its lender or municipal lessor, an amount of \_\_\_\_\_ dollars (\$) shall be paid for performance under the Investment Grade Audit Agreement ("Agreement"), mobilization and other costs incurred prior to commencement of Work.
- b) Progress and Final Payments: A Payment Schedule is attached hereto in Attachment X: Payment Schedule, Payment Application, and Certification. The Contractor will invoice on a progress basis all Work using the Application and Certification for Payment form.

All Payment Applications will be based on the Schedule of Contract Values, which will allocate the entire Project Install Price among the various portions of the Installation Services on a per ECM basis and be supported by sufficient data to substantiate its accuracy. Stored materials and pre-purchased equipment must be accompanied by written pre-authorization from the Owner. The Owner will make progress payments to the Contractor within 45 days of all amounts due upon receipt of such properly executed form.

- c) Payment Application: Progress payments will be calculated using the Payment Application and Certification Summary and Current Earnings form in Attachment 8 as follows:
  - i. Current Earnings

Determine the per ECM Installation Service charge for the current billing period as the percentage of work completed of the total ECM project cost allocated to that portion of the Installation Services in the Schedule of Contract Values, less Retainage of ten percent (10%), which shall be held as additional security for the faithful performance of all the work required under this Agreement. The Owner will pay retainage within forty-five (45) days after Final Acceptance;

Add that portion of the ECM project cost for pre-approved materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, less Retainage of ten percent (10%);

Deduct any utility or third-party rebates, withheld, or nullified earnings and any other adjustments to determine revised contract value to determine Payment for current Application.

- ii. Contract Payment Status

Complete information in Application Summary bringing forward aggregate of data from Current Earnings. The Owner will review, approve, or reject Payment Application within ten business days.

- iii. Substantial Completion

Upon Substantial Completion, the Contractor will provide a Delivery and Acceptance Certificate in the form of Exhibit 4 for each ECM. Within ten business days of receipt, the owner will sign and return the Certificate for each completed ECM indicating either acceptance or rejection of Substantial Completion.

Other than as a result of circumstances beyond the reasonable control and without the fault or negligence of the parties (see Section 3.2), if the Contractor fails to substantially complete a specific ECM by the scheduled ECM Substantial Completion Date stated in Attachment 7: Project Schedule (or an adjusted date approved by the owner in writing) then for each 30 days (or portion thereof) that the Substantial Completion Date is behind schedule, liquidated damages will be calculated and

## **Model Energy Management Services Agreement**

assessed. The monetary value of damages will equal that portion of the ECM remaining incomplete multiplied by the product of the number of days late divided by 30, multiplied by 3%, which calculation shall serve to reduce the Project Install Price. The assessment of liquidated damages shall cease as of the date of submission of a Delivery and Acceptance Certificate for such ECM. This reduction in the Project Install Price, if imposed, shall constitute the sole monetary recourse for the previously mentioned delay(s).

The Contractor will submit a Payment Application and Certification Summary and Current Earnings, adding a sum sufficient to increase the balance to 90% of the ECM project cost, less any amounts disputed as incomplete Work or unsettled claims.

### **iv. Final Completion**

At least thirty days in advance of the scheduled date of Final Completion, the Contractor will meet with the Owner to assess the progress and remaining work to complete the Scope of Services. If the Contractor is unable to complete the Scope of Services within the schedule time remaining then the Owner may request that the Contractor accelerate the Work.

### **v. Performance Period**

Following the date that the owner executes a Final Delivery and Acceptance Certificate (Attachment x), the owner will pay the current Performance Period Fee set forth in Attachment 4 for each successive twelve (12) month period.

### **vi. Retainage**

In addition to any other amounts to be retained hereunder, the owner may retain any sums otherwise owed to the ESCO sufficient to cover the full costs of any of the following:

- 1) The ESCO's failure to comply with any provision of the Scope of Services, or because of negligent acts or omissions in the performance of any part of the Agreement, including, but not limited to, violation of any applicable law, order, rule or regulation, including those regarding safety, hazardous materials or environmental requirements;
- 2) Correction of defective or nonconforming work by redesign, repair, rework, replacement or other appropriate means when the ESCO states, or by its actions indicates, that it is unable or unwilling to proceed with corrective action in a reasonable time and/or if the ESCO fails to take action within thirty (30) calendar days after receiving written notice and the owner is required to take action or perform work such as cleanup or completion of incomplete work.

### **vii. Charge Backs**

The owner may also back charge the ESCO for work done or cost incurred to remedy the aforementioned or any other ESCO defaults, errors, omissions or failures to perform or observe any part of the Scope of Services. The owner shall give written notice, and the ESCO will have thirty calendar days to remedy the reported problem before the owner performs such actions or work or incurs such cost.

The cost of back charge work shall include:

- 1) Labor costs including all payroll additives;

## **Model Energy Management Services Agreement**

- 2) Net delivered material costs;
- 3) Lower-tier supplier costs directly relating to performing the corrective action;
- 4) Equipment and tool rentals at prevailing rates;
- 5) Alternative temporary equipment; and
- 6) A factor of 15% applied to the total of Items (1) through (5) for overhead, supervision, and administrative costs. The back charge notice will request ESCO concurrence for the owner to proceed with the required action or work. The ESCO's failure to concur shall not impair the owner's right to proceed with the action or work under this or any other provision of this Agreement.

The owner will separately invoice or deduct from payments otherwise due to the ESCO the costs as provided herein. The owner's right to back charge is in addition to any and all other rights and remedies provided in this Agreement or by the Commonwealth of Massachusetts. The performance of back charge work by the owner shall not relieve CES of any of its responsibilities under this Agreement.

### **viii. Final Payment**

The entire unpaid balance of the Project Install Price, shall be made when (1) the Installation Services have been fully performed, including all training, commissioning and delivery of Project documentation, (2) a Final Delivery and Acceptance Certificate has been executed and (3) an Application for Final Payment has been issued and approved.

The owner will make final payment not more than thirty days after the issuance of the Application for Final Payment of any balance remaining that is not disputed.

### **2.4 Agreement Termination**

This Agreement shall terminate \_\_\_\_\_ ( ) years after Acceptance and Final Completion unless otherwise agreed to in writing (with twenty years being the maximum allowed).

## **SECTION3: GENERAL PROVISIONS**

### **3.01 Dispute Resolution**

Disputes regarding changes in and interpretations of the terms or scope of the Agreement and denials of or failures to act upon claims for payment for extra work or materials shall be resolved according to the following procedures:

- a) All claims by either party shall be made in writing and submitted to the Owner for a written decision.
- b) Contractor shall not delay, suspend, or curtail performance under the Agreement because of any dispute subject to this section.
- c) Within sixty days of submission of the dispute to the Owner, the Owner shall issue a written decision stating the reasons thereof, and shall notify the parties of their right of appeal under this section. If the official or his designee is unable to issue a decision within sixty days, he shall notify the parties to the dispute in writing of the reasons and of the date by which the decision shall issue.

## Model Energy Management Services Agreement

- d) Arbitration to commence w/in 60 days

Failure to issue a decision within one hundred and twenty-days (or within the additional period specified in such written notice) shall give the petitioner the right to pursue any legal remedies available to him without further delay.

### 3.02 Conditions beyond Control of the Parties

Except as otherwise provided herein, if either party shall be unable to carry out any material obligation under this Agreement due to events beyond its control, such as acts of God, governmental or judicial, insurrections, riots, extended labor disputes, fires, explosions or floods, this Agreement shall remain in effect but the affected party's obligations shall be suspended until the uncontrollable event terminates or is resolved, unless the Agreement is terminated by mutual consent, in which event, Owner shall pay Contractor for all parts of the Work furnished to the date of termination or as otherwise agreed.

### 3.03 Labor Laws

The Contractor shall obey and abide by all laws and regulations of the Commonwealth relating to the employment of labor and public work.

Contractor shall comply with all federal and state laws, rules, and regulations promoting fair employment practices or prohibiting employment discrimination and unfair labor practices. Contractor shall not discriminate in the delivery of services against any person who otherwise meets the eligibility criteria for services, or in the hiring of any applicant for employment nor shall any qualified employee be demoted, discharged or otherwise subject to discrimination in the tenure, position, promotional opportunities, wages, benefits or terms and conditions of their employment because of race, color, national origin, ancestry, age, sex, religion, disability, status as a Vietnam Era Veteran, sexual orientation or for exercising any rights or benefits afforded by law.

### 3.04 Prevailing Wage Rate

The Division of Occupational Safety has established a Schedule listing the prevailing minimum wage rates that must be paid to all workers employed on the Agreement by either the Contractor or its subcontractors. Such Schedule shall continue to be the minimum rate of wages payable to workers on this Agreement throughout the term of this Agreement. The Contractor shall not have any claim for extra compensation from the Owner if the actual wages paid to employees on the Agreement exceeds the rates listed on the Schedule. The Contractor shall cause a copy of the Schedule to be kept in a conspicuous place at the project site during the term of this Agreement (see MGL c. 149 § 27). If reserve police officers are employed by the Contractor they shall be paid the prevailing wage rate of regular police officers (see MGL c. 149 § 34B).

### 3.05 Appropriations

The Owner reasonably believes that funds can be obtained sufficient to make all payments due to Contractor under this Agreement. The Owner hereby covenants that it will make reasonable and diligent efforts to obtain and maintain funds from which such payments may be made, including making provisions for such payments to the extent necessary in each annual or supplementary budget submitted for the purpose of obtaining funds, and using reasonable efforts to have such portion of the budget approved. Nothing herein shall obligate the Owner to institute legal action before any court, to commence proceedings before any forum, or to institute proceedings in the nature of mandamus against any public official in attempting to obtain said funds.

In the event that the Owner is unable to obtain an appropriation of funds sufficient to discharge the Owner's obligations under this Agreement (**insert language citing municipal contracting/appropriation authority. See M.G.L. chapter 44, section 31**).

## **Model Energy Management Services Agreement**

### **3.06 Laws, Regulations, Ordinances, and Standard Practices**

Contractor shall perform its obligations hereunder in compliance with all applicable federal, state, and local laws, regulations, ordinances and by-laws, including applicable licensing and permitting requirements, in accordance with sound engineering and safety practices, and in compliance with all reasonable rules or policies of the Owner relative to the properties. Contractor shall be responsible for obtaining all governmental permits, licenses, consents, and authorizations as may be required to perform its obligations hereunder (see Section 4.10 regarding permits and fees pertaining to the Work).

This Agreement is made and shall be interpreted and enforced in accordance with the laws of the Commonwealth of Massachusetts. If any provision of this Agreement shall be determined to be invalid or unenforceable under applicable law, such provision shall, insofar as possible, be construed or applied in such manner as will permit enforcement; otherwise this Agreement shall be construed as if such provision had never been made part thereof.

The Parties agree to notify each other as promptly as is reasonably possible but in no event more than 3 business after becoming aware of an inspection under, or any alleged violation of, the Occupational Safety and Health Act or any other provision of Federal, State or local law, relating in any way to the undertakings of either Party under this Agreement.

### **3.07 Patents and Patent Rights**

The Contractor shall indemnify and hold the Owner harmless from all claims and actions due to any actual or asserted infringement upon patent rights in any equipment, material, or process used by Contractor in connection with this Agreement.

### **3.08 Access and Inspection**

Owner shall have access to inspect the Work and the books, records, and other compilations of data that pertain to this Agreement. Records shall be kept on a generally recognized accounting basis and calculations kept on file in legible form. Records shall be saved or archived for a period of three (3) years after the termination of this Agreement and shall be kept or made available within Massachusetts.

Contractor shall have access (upon reasonable notice to the Owner) to inspect the property to assess the condition and operation of material and equipment installed and shall maintain an adequate inspection system and perform such inspections as will ensure that the work performed under the Agreement conforms to Agreement requirements. The Contractor shall maintain complete inspection records and make them available to the Owner.

All work is subject to inspection and testing at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the Agreement. Contractor shall replace or correct work, without charge, found not to conform to the Agreement. If the Contractor does not promptly replace or correct rejected work, the Owner may, by contract or otherwise, replace or correct the work and charge the cost to the contractor or terminate for default the Contractor's right to proceed.

Notwithstanding inspection and acceptance by the Owner or any provision concerning the conclusiveness thereof, the Agreement warrants that all services performed will, at the time of acceptance, be free from defects in workmanship and conform to the requirements of this Agreement.

### **3.09 Ownership of Documents**



## **Model Energy Management Services Agreement**

All drawings, reports and other materials prepared by Contractor specifically in performance of this Agreement shall become the property of the Owner. Said documents will be available as needed by the Owner or, if not so requested, prior to acceptance of the project.

### **3.10 Sales Tax Exemption**

Owner is exempt from the assessment of Massachusetts sales and use taxes. Owner shall issue Contractor a tax exemption certificate to use for the purchases of new equipment/systems for the Owner's benefit to complete the Work. Contractor shall not pay any sales or use taxes on any item exempt from Massachusetts sales and use taxes unless authorized by Owner or is ordered by an appropriate taxing authority to remit sales and use taxes.

### **3.11 Certificates**

Contractor certifies as follows:

- a) Certificate of Authorization: If Contractor is a corporation, each person executing this Agreement on behalf of the Contractor hereby covenants, represents and warrants that Contractor is a duly incorporated or duly qualified (if foreign) corporation and is authorized to do business in the Commonwealth of Massachusetts (a copy of evidence thereof to be supplied to the Owner upon request); and that each person executing this Agreement on behalf of the Contractor is an officer of Contractor and that he or she is duly authorized to execute, acknowledge and deliver this Agreement to the Owner, a copy of a corporate resolution to this effect is attached hereto as Attachment \_.
- b) Tax Compliance Certification: Pursuant to M.G.L. c. 62C § 49A(b), each person signing this Agreement on behalf of the Contractor hereby certifies, under the penalties of perjury, that to the best of his/her knowledge and belief, the Contractor has complied with any and all applicable state laws.
- c) Certificate of Non-collusion: The undersigned certifies under penalties of perjury that this Agreement has been made in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity of group of individuals.
- d) Foreign Corporation: Contractor, if a foreign corporation, hereby certifies that it complies with M.G.L. c. 181 § 4 and that the name and address of the resident agent is attached hereto with Exhibit \_.
- e) Covenants: Contractor covenants that: (1) it presently has no financial interest and shall not acquire any such interest direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement or which would violate M.G.L. c. 268A, as amended from time-to-time, (2) in the performance of this Agreement, no person having such an interest shall be employed by the Contractor, and, (3) no partner or employee of the Contractor is related by blood or marriage to any Commissioner or employee of the Owner.
- f) Owner Certification: The Owner certifies that it is duly authorized to execute, acknowledge and deliver this Agreement under the provisions of M.G.L. Chapter 25A § 11C or § 11I, to retain Contractor to design, acquire, install and assist in the maintenance of the installed equipment to accomplish the energy conservation measures and to provide other services, as more fully set forth herein, subject to all the terms and conditions of this Agreement.

### **3.12 Assignment**

Contractor shall not assign, transfer, convey, or otherwise dispose of this Agreement, or any part hereof, or his right, title or interest in the same or any part thereof, without the prior written consent of the Owner. Contractor

## **Model Energy Management Services Agreement**

shall not assign by power-of-attorney, or otherwise, any of the moneys due or to become due and payable under this Agreement, without the prior written consent of the Owner.

### **3.13 Audit Report and Project Development**

The Contractor has prepared the complete Audit Report of the Project Site(s) that has been approved and accepted by Owner (Exhibit 4: Certificate of Acceptance—Technical Energy Audit Report). The Final Audit Report set forth in Attachment 3: Scope of Work and dated \_\_\_\_\_ includes all energy conservation measures agreed upon by the parties.

### **3.14 Complete Agreement**

This Agreement, together with any documents incorporated herein by attachment or by reference, shall constitute the entire and exclusive Agreement between both parties. This Agreement may not be amended or modified except in writing and executed by the Owner and the Contractor.

It is understood and agreed that the following documents, attachments, exhibits, schedules and any amendments and/or addenda, comprise the total Agreement:

- Attachment X: Property Description
- Attachment X: Baseline Energy Consumption
- Attachment X: Scope of Work
- Attachment X: Project Cost and Savings (Available in excel spreadsheet)
- Attachment X: Measurement & Verification Plan
- Attachment X: Commissioning Plan
- Attachment X: Project Schedule
- Attachment X: Payment Schedule, Application and Certification (Available in excel spreadsheet)
- Attachment X: Equipment Submittals
- Attachment X: Training

- Exhibit X: Notice to Proceed
- Exhibit X: Certificate of Acceptance Final Audit Report
- Exhibit X: Certificate of Acceptance Forms
- Exhibit X: Payment and Performance Bonds
- Exhibit X: DOER Annual Report Form

The failure of either the Contractor or the Owner to insist upon the strict performance of any term or condition hereof shall not constitute or be construed as a waiver or relinquishment of either party's right to thereafter enforce the same in accordance with this Agreement.

## **SECTION 4: THE WORK**

### **4.01 Time for Performance and Final Completion**

Contractor shall commence Work within sixty days of Owner sending the Contractor a Notice to Proceed, which Owner shall send upon closing financing. Contractor shall substantially complete Work within \_\_\_\_\_ ( ) days after commencing said Work. Extension of dates to commence or complete Work is at the sole discretion of the Owner. Approval for an extension of dates to commence or complete Work shall not be unreasonably withheld if the cause for an extension is pursuant to Sections 4.03, 4.06, 4.08, 4.12, 4.13, or 9.02.

If Contractor is delayed in the commencement or completion of any part of the Work due to events beyond Contractor's control and without the fault or negligence of the Contractor, including but not limited to fire,



## **Model Energy Management Services Agreement**

flood, extended labor disputes, unusual delays in deliveries, unavoidable casualties, abnormal adverse weather, war, and acts of God, or due to Owner's actions or failure to perform its obligations under this Agreement or to cooperate with the Contractor in the timely completion of the Work, then Contractor will notify Owner in writing of the existence, extent of, and reasons for such delay. Contractor shall have no claim for additional compensation because of such delays but Contractor and Owner may extend the Agreement time by revision to the Technical Audit for such reasonable time, as they shall agree.

### **4.02 Specifications of Work**

Contractor's obligations hereunder are specified in Attachment 3: Final Accepted Technical Audit, which shall include the Scope of Work and related drawings and plans and any subsequent revisions thereto, as approved by the Owner. Excluded from the Work are any modifications or alterations to the properties not expressly included within the Work. The requirements of all applicable laws, regulations and codes of federal, state, and local town or city government shall be met at all times. All Work shall be performed in a professional and competent manner.

### **4.03 Construction Procedures, Changes to Work and Coordination**

Contractor shall supervise and direct the Work using its best ability, skill, attention, and oversight. Contractor, in consultation with Owner, shall be responsible for the construction means, methods, techniques, sequences, and procedures. The Owner will review all proposed modifications to the building and systems and must approve of them prior to commencement of any work; such approval will not be unreasonably withheld. No change to the scope or specifications of Work shall be made without the written consent of the Owner, in the form of a revision to the Technical Audit. If Contractor fails to correct Work that is not in accordance with the specifications or persistently fails to meet specifications herein, Owner, by written order signed personally or by its authorized agent, may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated.

Contractor shall perform the Work in such a manner as to not harm the structural integrity or operating systems of any building and shall repair and restore any damage caused by the Work at Contractor's expense.

Contractor shall not create or allow to continue any condition deemed to endanger health or safety as defined in Section 5.01 and if such a condition exists Owner shall have the right to exercise the remedies described therein.

Contractor shall supply to the Owner the telephone number of a responsible person who may be contacted during non-work hours for emergencies arising in connection with or affecting the Work.

Contractor shall coordinate any utility hookups provided by others under a separate agreement at no additional cost or expense to the Owner.

Contractor and its employees, subcontractors and agents shall not smoke within any building, including basements.

### **4.04 Relationship with Maintenance Staff**

Contractor shall cooperate with Owner's operating and maintenance personnel, train said personnel in operation and maintenance of any equipment installed as part of the Work, and coordinate the Work on a planned and programmed basis. Contractor shall deliver a preventive maintenance schedule and procedures for any equipment installed as part of the Work. No equipment shall be installed which will require additional personnel to be hired by the Owner for the operation or maintenance of said equipment without prior approval of the owner in the form of a revision to the Technical Audit.

### **4.05 Material and Equipment Installed**

## Model Energy Management Services Agreement

The Owner shall make the final determination whether any material or equipment installed is as specified in Contractor's Response to the RFP/RFQ, which is incorporated in this Agreement by Section 3.15, and the Technical Audit. No substitution of any material or equipment specified shall be made without the written consent of the Owner in the form of a revision to the Technical Audit, and any such substitution shall be at least equal in quality, finish, durability, serviceability and performance for the purpose intended.

Contractor shall install and, when applicable, operate and maintain, or, if specified in the Technical Audit, train Owner personnel to operate and maintain equipment in a manner that will provide standards of service to meet requirements of Section 4.02 and equipment manufacturers' literature, specifications and instructions.

Prior to the installation of any major mechanical systems, the Contractor shall submit design documents. The installation of such ECM shall not commence until the Owner accepts the design documents in writing. **All mechanical, electrical, and structural design drawings shall be stamped by a Massachusetts registered professional engineer for each corresponding trade if applicable.**

Contractor will prepare and furnish at least three Maintenance Manuals that include product data and, which are subject to acceptance by the Owner for all equipment installations at each property.

### 4.06 Disposal

Contractor will be responsible for proper disposal of all non-hazardous materials and construction demolition debris.

The Contractor will be responsible for proper disposal of all ballast's containing or suspected of containing PCBs and fluorescent lamps containing mercury. Disposal plans must be documented and appropriate transportation and disposal documents prepared before disposal commences, and actual disposal must be documented immediately after disposal.

Demolition debris can only be disposed of at a DEP and Town Board of Health licensed municipal sanitary landfill or DEP/EPA licensed recycling facility. The landfill or recycling facility must be permitted to receive the type of waste involved.

Hazardous waste can only be disposed of by a contractor licensed for special waste disposal.

In the event that friable asbestos is encountered and must be disturbed during the course of this Agreement, the Contractor will notify the Owner immediately. All work in the affected area shall cease until the Parties agree upon a remediation plan. This will not affect the savings allocation, but an extension of the completion date may be granted equal to the time lost. Contractor will take into account all available asbestos studies provided by the Owner during the audit phase of the project.

### 4.07 Subcontracting

Contractor may subcontract part of the Work to others provided any subcontractors are identified in Contractor's Response to the RFP/RFQ or in the Technical Audit. Contractor may, with the written consent of the Owner in the form of a revision to the Technical Audit, substitute a subcontractor for one so identified or, if no subcontractor for a certain trade or task has been so identified, engage one. Contractor shall be responsible for the conduct, acts, and omissions, whether intentional or unintentional, of its subcontractors, employees, agents, invitees or suppliers. Nothing in this Agreement shall create any contractual relationship between any subcontractor, employee, agent, invitee or supplier and the Owner.

### 4.08 Equipment Location and Access

## **Model Energy Management Services Agreement**

Buildings may be occupied during construction. Contractor shall take all necessary precautions to ensure the public safety and convenience of the occupants during construction. The Contractor shall complete the Work in accordance with the schedule in Attachment 7: Project Schedule. Contractor must use sufficient personnel and adequate equipment to complete the Work pursuant to Section 4.01. The Work must be completed in a continuous uninterrupted operation between the hours of 8:00 AM and 4:30 PM on Monday through Friday, unless otherwise authorized in writing by the Owner. No Work is to be done on holidays, Saturdays, or Sundays other than for emergencies or unless agreed to in writing.

The Contractor is responsible for the security of partially completed work and for materials or equipment stored at Owner properties. Only materials and equipment intended and necessary for immediate use shall be brought into the buildings. Equipment and unused materials shall be removed from each building by the end of each workday. The Owner shall provide if available, without charge, a mutually satisfactory location, or locations for the storage and operation of materials and equipment and the performance of the Work, including a location for staging and mobilization.

Flammables and combustibles shall be stored only in accordance with Fire Prevention Regulations (527 CMR 1.00-50.00). In the event that the Owner is unable to provide a satisfactory location then Contractor shall provide and pay for suitable storage.

### **4.9 Permits and Fees**

Contractor shall secure and pay for building and other permits and governmental fees, licenses, and inspections that are required by federal, state, or town or city governments for proper performance and completion of the Work. In the event that fees for any permits are reduced or waived by request, standing, or intervention of the Owner, then, at the Owner's option, the amount of the savings of the fee shall be deducted from the line item in the Work budget and added to the contingency line item or the Agreement Price reduced by that amount.

Subsequent to receipt of a Notice to Proceed, the Contractor shall provide a listing of all anticipated permits required to implement the Scope of Work described in Attachment 3.

### **4.10 Utilities**

The Owner shall provide and pay for water, heat, and utilities consumed by the Contractor during performance of the Work. The Contractor shall install and pay for any facilities or modifications not already in existence that is necessary to access such water, heat, and utilities during the Work.

### **4.11 Concealed or Unknown Conditions**

If Contractor finds conditions during the Work that are subsurface or otherwise concealed physical conditions that differ materially from those indicated on the drawings or are unknown physical conditions of an unusual nature that differ materially from those conditions ordinarily found to exist and generally recognized as inherent in similar construction activities, Contractor shall notify Owner of such conditions promptly, prior to significantly disturbing the same, and in no event later than one (1) business day after first observing the conditions. Such conditions may include, but are not limited to, water damage, termite damage, or structural building defects. If such conditions differ materially and cause an increase in the Contractor's cost of, or time required for, performance of any part of the Work, the Contractor shall submit a written estimate of the material and labor cost increase and time delay. If the Owner concurs with the need, cost estimate, and time delay, Owner and Contractor shall make an equitable adjustment in the Agreement Price or Time for Performance and Final Completion, or both. Pursuant to Section 4 above, Contractor shall not be entitled to damages for delay. In no event shall the Agreement Price be increased by more than ten percent (10%) of the applicable ECM at the applicable building.

## **Model Energy Management Services Agreement**

### **4.12 Casualty, Condemnation, Damage**

If any fire, flood, other casualty, or condemnation renders a portion of any property described in Attachment 1 unsuitable for habitation or destroys a substantial part of the area within which the Work is to be performed or which the Work affects, the Owner and Contractor may terminate or modify this Agreement by mutual agreement. The Owner shall pay Contractor for all Work completed to the date of termination. If any material or equipment is damaged by the negligence or willful misconduct of an employee, agent or invitee of Owner, Owner shall repair or replace said item within a reasonable period, or, adjust the Agreement Price to pay for repair or replacement or adjust Time for Performance and Final Completion, or both.

### **4.13 Standards of Service and Comfort**

The following facility performance requirements of service and comfort shall apply throughout the Agreement term:

<b>Type of Service</b>	<b>Environmental Requirement</b>
a) Heating	
b) 1) Occupied	70° F
2) Unoccupied	55° F
3) Storage	55° F
c) Cooling	
1) Occupied	72-76° F
d) Hot Water Heaters	140° F (Must meet 248 CMR, Board of State Examiners Plumbers and Gasfitters)
e) Hot Water Distribution	110°F (Maximum)
f) Ventilation	Within Code at all times
g) Lighting	Within code at all times

### **4.14 Shutdown of Services**

Contractor hereby acknowledges that continuous operation of services, including but not limited to heat, water, domestic hot water, electricity, gas, sanitary facilities, elevators, fire alarms, or protections, and access to the property or common areas is essential to the operation of the Owner's properties. If any such service, or access to the property, or any common area is to be discontinued for any period of time in order to perform the Work, Contractor shall give the Owner as much notice in writing as is practicable, but in no event less than seven (7) days in which event the Owner shall, by written response, approve unconditionally or with conditions such shutdown of services. Such conditional approval may include a requirement for the Contractor to provide and pay for temporary services, may limit the time for which services or access may be shut down, or may require other actions, accommodations, or expenditures on the part of the Contractor. With respect to fire alarm or other fire protections, Contractor shall also notify the local fire department of any shutdown of service and notify the fire department when such service is restored.

The Owner acknowledges that such shutdowns may be necessary to perform the Work from time to time and will not withhold approval unreasonably. The Owner agrees to communicate with occupants on plans to shut down services or access and temporary measures, if any, which will be made.

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### **4.15 Indemnification and Limitation of Liability**

Contractor shall be responsible for the Work and take all precautions for preventing injuries to persons and property in or about the Work and shall bear the costs of all losses or damages resulting from or because of the Work. The Contractor shall pay or cause payment to be made for all labor performed or furnished and for all material used or employed in carrying out this Agreement. Contractor shall assume the defense of, indemnify and hold harmless the Owner, their officers and agents from all claims relating to the following:

- a) Labor performed or furnished and materials used or employed for the Work,
- b) Inventions, patents and patent rights used in and in doing the Work,
- c) Injuries to any person received or sustained by or from the Contractor and its employees, subcontractors and its employees, any agents, suppliers and invitees in doing the Work, or as a consequence of any improper materials, implements of labor used or employed therein, and
- d) Any act, omission, or neglect of the Contractor and any employees, subcontractors and employees, agents, suppliers and invitees.

Nothing herein shall relieve or limit the Contractor of liability for losses and damages to person or property because of its operations. The Contractor shall indemnify and hold the Owner harmless from all liability, including attorneys' fees and legal costs, associated with or resulting from the Contractor's operations.

## **SECTION 5: PERFORMANCE AND EVALUATION SUBSEQUENT TO WORK**

### **5.01 Workmanship and Equipment Warranty**

Contractor hereby assigns to the Owner all warranties of all equipment and materials used in the Work. Attachment 3 lists equipment and material warranties, however, failure to include any equipment or materials having a warranty neither excludes said equipment or materials from the provisions of neither this section nor Contractor's responsibilities hereunder.

Contractor warrants that, for a period of one year from the date of the Certificate of Final Completion ("Warranty Period"), all equipment, materials and Work shall be free from defects in material, manufacture, workmanship and performance as set forth by the catalogs, bulletins and specifications included within Contractor's Response to the RFP/RFQ, Technical Audit, or this agreement, whichever is appropriate. If such defect occurs within the Warranty Period, Contractor shall correct and pay for correction of all defects including replacement or repair and all parts and labor.

Contractor warrants that, for any equipment or materials used in the Work with a warranty period in excess of one year, Contractor shall correct all defects including replacement or repair provided that Contractor's obligation is limited to the terms of the warranty and provided further that the Owner, by mutual consent with Contractor, may correct said defect.

No warranty liability shall attach to the Contractor until Work has been substantially completed and payment has been made. Contractor's warranties expressly exclude any remedy for damage or defect caused by abuse, improper operation, unapproved modifications or improper repairs not performed by Contractor.

If Contractor, upon written notice from the Owner, fails to correct defective equipment, materials or Work within a reasonable period of time, but no less than seventy two (72) hours, unless such defect is a condition deemed to endanger health or safety or is a fire hazard, Owner may correct any defect and Contractor shall reimburse Owner for its reasonable expenses incurred in performing such correction subject to any limitations contained within this section. Conditions which are deemed to endanger under the State Sanitary Code (105 CMR 410.000) or are fire hazards under Fire Prevention Regulations (527 CMR 1.00-50.00) shall be addressed promptly and jointly, if necessary, by Contractor and Owner assuring that immediate precautions are taken to



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avoid risk to persons or property, imminent measures are taken to prevent deterioration of condition, occupants are alerted to any dangers or hazards, and steps for final correction taken within twenty four (24) hours.

### 5.02 Evaluation of Savings Achieved

The energy and water savings that occur after the Final Completion Date shall be determined by the difference between actual consumption and baseline consumption as shown in Attachment 2: *Baseline Data and Projection* and as adjusted for occupancy, changes in the manner in which energy or water may be used other than manner of use which has been incorporated as part of the Work, and in the case of heating energy, substantial differences in heating degree days for the pertinent periods. For the duration of this agreement, the Contractor shall monitor Owner's energy and water bills at properties subject to the Work for energy and water usage and shall report quarterly, within fifteen (15) business days after receiving bills for said period, comparing actual usage to the baseline and projections with detailed explanations of variations in savings, including shortfalls, to the Owner. The determination and evaluation of savings shall be consistent with procedures and methods described in the RFP/RFQ and the Audit Report.

Contractor shall prepare an annual report pursuant to 225 CMR 10.07: Monitoring; Reporting Requirements or 225 CMR 19.08: Monitoring; Reporting Requirements for submission to the Owner in a form suitable for review, and shall simultaneously forward the submission electronically to DOER at EMS.Doer@state.ma.us.

The Owner shall notify Contractor of substantive changes in the properties or the operation or occupancy thereof that could effect energy or water use within 48 hours or as soon as is reasonably possible. Such substantive change will be incorporated in the determination and evaluation of savings.

The obligations under this section are also described in the RFP/RFQ and the Contractor's response thereto, and incorporated herein by reference as described in Section 3.14: *Complete Agreement*. Contractor shall be compensated at the rate of \_\_\_\_\_ dollars (\$\_\_\_\_\_) per quarter for monitoring and reporting services, payable no later than forty-five (45) days after receipt of the quarterly report as described above, provided such compensation shall be payable only if available from savings after any scheduled financing expenses or interest are paid. [Note: The regulations do not require quarterly monitoring, however, we encourage that energy usage be monitored quarterly.]

### 5.03 Performance and Guarantees

Contractor guarantees to the Owner the following:

- a) Products provided by the Contractor meet or exceed the published catalog ratings and that these ratings were accurately used in the calculation of energy and water savings estimates,
- b) Representations made concerning energy or water consumption in its estimates are accurate, and
- c) Based on the projected use of energy and water for the equipment, conditions and operations in place at the time of completion of the Work, which the Owner and the Contractor have agreed to and documented in Attachment 2: *Baseline Data and Projection*, the Owner will save at least \_\_\_\_\_ dollars (\$\_\_\_\_\_) per year during the term of this Agreement.
- d) Calculations for Verified Unit and Cost Savings will be made in the same manner as the savings analysis set forth in the IGA, measured, and verified pursuant to Attachment 5: *Measurement and Verification Plan* and subject to adjustments as set forth in this Agreement.



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### **5.04 Performance Remedies**

Contractor shall be bound to both the yearly and total guaranteed savings. If, in any guaranteed savings year, , during the term of this Agreement, the utility savings (in native units) are less than the guaranteed amount (shortfall), Contractor shall be required to implement one or more of the following remedies, such remedies to be at the sole and exclusive discretion of the Owner:

- a) Within forty five (45) days after determination that actual savings are less than guaranteed, modify the installation at no cost to the Owner so that the guaranteed savings rate as projected in Attachment 6 is attained, and pay or credit, at the Owner's option, to the Owner an amount equal to the difference in the actual savings, if any, and the guaranteed savings, and/or
- b) Pay or credit the Owner, at the Owner's option, an amount equal to the difference between the actual savings, if any, and the guaranteed savings, as projected in Attachment 6.

The value of any shortfall in the specific year will be assessed using the utility rates calculated for the specific year (Refer to Attachment 6), in which the shortfall exists. Any excess savings will remain the property of the Owner.

### **5.05 Independent Audit**

The Owner shall have the right to retain, at its own expense, an independent auditor to complete and submit to the parties an audit of the calculations of Energy Cost Savings made pursuant to this Agreement. Any audit so performed must use and incorporate the same methods, procedures, and assumptions as contained in this Agreement and used by Contractor to perform the calculations undergoing an audit pursuant to this Section. Any payments between the parties necessary to resolve an irregularity identified in the audit shall be made within thirty days after submission of the audit to the parties. If, after thirty days, the parties are unable to agree upon the adjustment, the matter shall be submitted to resolution pursuant to Section 3.01.

### **5.06 Other Performance Terms and Conditions**

All actions taken under Section 6, including but not limited to correction of warranties, remedy of performance shortfalls and maintenance of equipment by Contractor, shall conform to sections 5.02 through 5.16 inclusive.

### **5.07 Agreement Closeout Responsibility**

Prior to any final payment made pursuant to Section 4, Contractor shall perform commissioning as stipulated in Attachment 8 of the equipment covered by this Agreement and prepare an assessment of the condition of the equipment and materials installed as part of the Work.

- a) Conduct a thorough and systematic performance test of each element and total system of the installed equipment detailed in Attachment X: Equipment Submittals in accordance with the commissioning procedures as defined in Attachment 8. Prior to Substantial Completion of each ECM, the Contractor will determine if (1) equipment is functioning in accordance with both its published specifications and, (2) in accordance with the terms of this Agreement, and all building systems, subsystems or components are functioning properly with the new integrated environment.
- b) Conduct the training program described in Attachment X: Training Program, including software, prior to Final Delivery and Acceptance. The cost of such training shall be included in the Performance Period Fee set forth in Attachment X.
- c) Prepare a closeout report that includes (but is not limited to as appropriate) the operating and maintenance recommendations during the remaining life of equipment installed, if any changes in

## **Model Energy Management Services Agreement**

technology or procedures affecting the equipment could extend the useful life of the equipment or increase the conservation efficiency, and an overview of new technology or additional conservation measures for the Owner to consider.

### **SECTION 6: OBLIGATIONS OF THE PARTIES**

#### **6.01 Obligations of the Contractor**

Contractor acknowledges and agrees that Contractor's obligations hereunder are in the capacity of providing professional services for the purposes described in the Preamble to this Agreement and in said capacity is expected to provide energy and water auditing, engineering, design and monitoring services, construction management including general contracting as necessary, and other related services as solicited in the RFP/RFQ and as may normally be incidental to these types of professional services. Contractor acknowledges and agrees that any other functions including but not limited to manufacturer's representative, dealer or distributor of equipment, materials or commodity specified herein or as subcontractor, or ownership in whole or in part or financially affiliated with a Contractor which performs such other function shall constitute a conflict of interest which shall constitute a material breach of this Agreement unless 1) fully disclosed in the Contractor's Response to the RFR, and 2) accepted by the Owner under terms which are specified in the Technical Audit. Contractor acknowledges and agrees that this paragraph applies to all its officers and employees.

The following events or conditions shall constitute a breach by the Contractor and shall give the Owner the right, without an election of remedies, to proceed pursuant to Section 3.01 and/or terminate this Agreement by delivery of written notice declaring termination, upon which event the Contractor shall be liable to the Owner for any and all damages sustained by the Owner:

- a) Any attempt by the Contractor to increase the Agreement price for reasons other than those related to changes in the Work pursuant to Section 5.03,
- b) Any failure by the Contractor to provide quarterly monitoring reports pursuant to Section 6.02,
- c) Any failure by the Contractor to remedy a shortfall in the yearly guaranteed savings pursuant to Section 6.04,
- d) Any representation or warranty furnished by the Contractor in Contractor's Response to the RFR, the Technical Audit or this Agreement which is false or misleading in any material respect when made,
- e) The filing of bankruptcy by the Contractor or by Contractor's creditors, an involuntary assignment for the benefit of creditors, or the liquidation of the Contractor,
- f) Any failure by the Contractor to perform or comply with any other material term or condition of this Agreement, including breach of any covenant contained herein, provided that such failure continues for thirty (30) days after written notice to Contractor demanding that such failure be cured or, if cure cannot be effected in thirty (30) days, the Contractor fails to begin to cure and proceed to completion thereof as quickly as is reasonably possible.

#### **6.02 Obligations of the Owner**

The Owner acknowledges and agrees that the implementation of the maximum conservation of energy and water practical within any pertinent regulatory, operational, or physical constraints is of the essence to this Agreement. Owner agrees to respond to all audits, proposed revisions and related requests on a timely basis for the expeditious design, implementation and monitoring of conservation measures.

Each of the following events or conditions shall constitute a breach by Owner and shall give the Contractor the right, without an election of remedies to proceed pursuant to Section 3.01 and terminate this Agreement by delivery of written notice declaring termination, upon which event the Owner shall be liable to the Contractor for all Work furnished to date:

## Model Energy Management Services Agreement

- a) Any failure by the Owner, without cause, to authorize payment due more than forty-five (45) days after receipt of the invoice therefore,
- b) Any representation by Owner in the RFP/RFQ and this Agreement is false or misleading in any material respect when made,
- c) Any failure by the Owner to perform or comply with any other material term or condition of this Agreement, including breach of any covenant contained herein, provided that such failure continues for thirty (30) days after written notice to the Owner demanding that such failure be cured or, if cure cannot be effected in thirty (30) days, the Owner fails to begin to cure and proceed to completion thereof as quickly as is reasonably possible.

### SECTION 7: INSURANCE AND BOND REQUIREMENTS

#### 7.01 Worker's Compensation Insurance

Workers Compensation Coverage A	Statutory Minimum
Employer's Liability Coverage B	\$500,000 each accident \$500,000 disease per employee \$500,000 disease policy

#### 7.02 Comprehensive General Liability

Bodily Injury and Property Damage	\$2,000,000 each occurrence, \$4,000,000 aggregate
Products & Completed Operations	\$2,000,000 aggregate
Personal & Advertising Injury	\$2,000,000 each occurrence

This policy shall include coverage relating to explosion, collapse, and underground property damage and contractual liability coverage. Contractor shall provide a separate "Owners and Contractor's Protective Liability" policy in the name of the Owner at the same limits listed above. The completed operations coverage shall be maintained for a period of two (2) years after Substantial Completion as defined in Attachment 3.

#### 7.03 Vehicle Liability

Contractor shall provide the following minimum coverage with respect to the operations of the any employee, including coverage for owned, non-owned, and hired vehicles:

Bodily Injury	\$2,000,000 each person
Property Damage	\$2,000,000 each accident \$4,000,000 aggregate

#### 7.04 Property Coverage

Contractor shall provide the following coverage against loss or damage by fire and against loss or damage covered by the special perils insurance endorsement on all Work:

Special Perils	80% of Agreement Price minimum
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Upon completion of Work at Owner buildings, Contractor shall provide an installation floater, in the full amount of the Agreement Price, for the requirements set forth above. The policy or policies shall specifically state that

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they are for the benefit and payable to the Owner, the Contractor, and all persons furnishing labor or labor and materials for the Work, as their interests may appear.

### 7.05 Owner as Additional Insured

The Owner shall be named as additional insured on the Contractor's Liability Policies.

### 7.06 Certificates of Insurance, Policies

Certificates of insurance, acceptable to the Owner, shall be submitted to the Owner upon the execution of this Agreement and shall be renewed upon expiration of the policies. Certificates shall indicate that the coverage required by section 7.01 through 7.05 is in effect. If the Owner is damaged by Contractor's failure to maintain such insurance, then Contractor shall be responsible for all reasonable costs or damages attributable thereto. Certificates shall note the thirty-day cancellation notice requirement of Section 7.07. All policies shall be issued by companies authorized to write that type of insurance under the laws of the Commonwealth of Massachusetts.

### 7.07 Cancellation

Cancellation of any insurance required by this Agreement, whether by the insurer or the insured, shall not be valid unless written notice thereof is given by the party proposing cancellation to the other party and the Owner at least thirty days prior to the effective date thereof.

### 7.08 Bonds

Contractor shall provide the Owner with 100 % payment and performance within 30 days of award of the contract. The contractor shall furnish a certified copy and duplicate of a performance bond, with project financier as co-beneficiary along with the owner. Performance and payment bonds shall secure 100% of the Agreement Price for all ECMs cited. Work will not commence until the Owner receives the certified copy of the bonds.

The performance bond shall remain in effect until the Final Completion Date. The payment bond shall be released upon receipt of satisfactory evidence that all subcontractors, laborers, etc., have been paid in full.

### Agreement Signatures

IN WITNESS THEREOF, the parties have each caused this Agreement to be executed in triplicate on the dates set forth below (the last of which shall be considered the date of execution hereof) by their duly authorized representatives.

[Contractor]  
Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

[Agency]

Name \_\_\_\_\_

Title \_\_\_\_\_

[Owner]  
Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

Approved as to Form: \_\_\_\_\_  
Office of General Counsel

## **Model Energy Management Services Agreement**

### **ATTACHMENT X: PROPERTY DESCRIPTION**

Provide description of properties included in the scope of work.

## **Model Energy Management Services Agreement**

### **ATTACHMENT X: BASELINE ENERGY CONSUMPTION**

Describe in general terms how the baseline for each ECM is defined. Describe variables affecting baseline energy or water use. Include variables such as weather, operating hours, set point changes, etc.

Describe how each variable will be quantified, i.e., measurements, monitoring, assumptions, manufacturer data, maintenance logs, engineering resources, etc.

Define key system performance factors characterizing the baseline conditions. Include factors such as comfort conditions, lighting intensities, temperature set points, etc.

Provide details of baseline data collected, including:

1. Parameters monitored
2. Details of equipment monitored, i.e., location, type, model, quantity, etc.
3. Sampling plan, including details of usage groups and sample sizes
4. Duration, frequency, interval, and seasonal or other requirements of measurements
5. Personnel, dates, and times of measurements
6. Monitoring equipment used
7. Installation requirements for monitoring equipments (test plug for temperature sensors, straight pipe for flow measurement etc.)
8. Certification of calibration/calibration procedures followed
9. Expected accuracy of measurements/monitoring equipment
10. Quality control procedures used
11. Results of measurements (attach appendix and electronic forma as necessary)
12. Completed data collection forms

Provide details of baseline data analysis performed, including:

1. Analysis using results of measurements
2. Weather normalized regressions
3. Weather data used and source of data
4. The effective utility rate schedules used for calculating energy cost savings.



## **Model Energy Management Services Agreement**

### **ATTACHMENT X: SCOPE OF WORK**

# Model Energy Management Services Agreement

# ATTACHMENT X: PROJECT COSTS AND SAVINGS

The Excel version may be found at <http://www.mass.gov/eea/energy-utilities-clean-tech/green-communities/ems.html>

Project Costs:														
Project Install Price:			\$0.00		(Customer's total obligation to Contractor)									
Project Contingency:			\$0.00		(Customer controlled contingency)									
Total Financed Cost:			\$0.00											
Project Credits:														
Third-Party Funds:			\$0.00		(Estimated utility rebates or incentives)									
Grants:			\$0.00		(State or Federal grant funds)									
Other:			\$0.00		(Include any other funds used to buy-down the Total Finance Cost)									
Total Project Credits:			\$0.00											
Net Project Cost:			\$0.00											
Performance Period Fee: (The fee includes the Operations and Maintenance Oversight Fee and Measurement & Verification Fee)														
Year		O&M Fee		M&V Fee		Total Performance Period Fee								
1		\$0.00		\$0.00		\$0.00								
2		\$0.00		\$0.00		\$0.00								
3		\$0.00		\$0.00		\$0.00								
4		\$0.00		\$0.00		\$0.00								
5		\$0.00		\$0.00		\$0.00								
6		\$0.00		\$0.00		\$0.00								
7		\$0.00		\$0.00		\$0.00								
8		\$0.00		\$0.00		\$0.00								
9		\$0.00		\$0.00		\$0.00								
10		\$0.00		\$0.00		\$0.00								
11		\$0.00		\$0.00		\$0.00								
12		\$0.00		\$0.00		\$0.00								
13		\$0.00		\$0.00		\$0.00								
14		\$0.00		\$0.00		\$0.00								
15		\$0.00		\$0.00		\$0.00								
16		\$0.00		\$0.00		\$0.00								
17		\$0.00		\$0.00		\$0.00								
18		\$0.00		\$0.00		\$0.00								
19		\$0.00		\$0.00		\$0.00								
20		\$0.00		\$0.00		\$0.00								
Totals		\$0.00		\$0.00		\$0.00								

Model Energy Management Services Agreement

Estimated Annual Savings Overview

Year	Energy/Utility Savings/\$	Operational Savings/\$	Total Savings/\$
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
		Total Savings	\$

## Model Energy Management Services Agreement

### ATTACHMENT X: MEASUREMENT AND VERIFICATION PLAN

The contractor will prepare and submit a site-specific M&V plan that includes a schedule indicating M&V activities and post-award M&V reporting milestones for each ECM. Prior to installation of ECMs, the owner will witness measurements and review calculations, records (e.g., utility bills) and other elements of the baseline, to confirm its accuracy and to confirm that methods are consistent with the approved M&V plan. Include detailed energy savings calculation methodologies with supporting data and analysis; include interactions with other building energy measures.

#### M&V Plan Summary [Specify the M&V Option for each ECM]

ECM No.	ECM Description	Option*	Summary of M&V Plan

**[\*M&V options A, B, C, and D and methods proposed for each ECM must comply with the most recent version of the “DOE/FEMP M&V Guidelines: Measurement and Verification for Federal Energy Projects]**

#### ECM-Specific M&V Plan and Savings Calculation Methods

##### [Develop section for each ECM]

1. Summarize the scope of work, location, and how cost savings are generated. Describe source of all savings including energy, water, O&M, and other (if applicable).
2. Specify the M&V guideline and option used from the most current Federal Energy Management Program Measurement and Verification Guidelines.
3. Provide an overview of M&V Activities for ECM. Explain intent of M&V plan, including what is being verified.
4. Provide an overview of savings calculations methods for ECM. Provide a general description of analysis methods used for savings calculations.

# Model Energy Management Services Agreement

## ATTACHMENT X: COMMISSIONING PLAN

**[Attach approved commissioning plan.]**

**ECM Commissioning** - The contractor shall assure the agency, through the ECM Commissioning, that the ECMs performance achieves facility and/or process performance requirements as set out in the contract. The ECM Commissioning shall be accomplished through a process of verification and documentation, in accordance with the “Commissioning Guidance for DOE Super ESPCs,” for which the link is located at [http://www1.eere.energy.gov/femp/financing/superespcs\\_esp basicsp4.html](http://www1.eere.energy.gov/femp/financing/superespcs_esp basicsp4.html).

1. **ECM Commissioning Approach** - The contractor shall submit in its final proposal, a severable ECM Commissioning Approach document, which utilizes data and factors derived from the IGA, needed to achieve facility performance requirements in accordance with the contract.
2. **ECM Commissioning Plan** - After the agency reviews and accepts the design and construction package, the contractor shall provide a Commissioning Plan to the agency for acceptance that finalizes the Commissioning Approach and addresses each ECM with specific steps that will be taken during the commissioning process.
3. **ECM Commissioning Report** - The contractor shall submit to the agency a Commissioning Report documenting the ECM’s affect upon facility performance requirements in accordance with the Commissioning Plan and agency requirements.

## **Model Energy Management Services Agreement**

### **ATTACHMENT 7: PROJECT SCHEDULE**

Within 45 days from the execution of this agreement, the Contractor will, for each ECM in each of the buildings, provide a detailed schedule for equipment delivery, when access is needed to perform construction work, building & public safety inspections, date equipment brought on-line, testing and government witnessing, and substantial completion.



## Model Energy Management Services Agreement

### ATTACHMENT X: PAYMENT APPLICATION AND CERTIFICATION

Excel version is available at <http://www.mass.gov/eea/energy-utilities-clean-tech/green-communities/ems.html>

#### PAYMENT APPLICATION AND CERTIFICATION

TO: _____ ADDRESS: _____  _____  PROCUREMENT # _____ PROJECT NAME _____ PROJECT ID # _____	PAYMENT APPLICATION # _____ INVOICE # _____ PAYMENT PERIOD FROM: _____ PAYMENT PERIOD TO: _____ VOUCHER # (for use by owner) _____
---	--

I certify that, to the best of my knowledge and belief, this Application for Payment along with the attached Schedule of Values, represents a true and reasonable estimate of the work performed during the stated period and I further certify that the work completed to date under this contract is in full accordance with the terms of the Contract.

Contractor: \_\_\_\_\_

\_\_\_\_\_  
 Signature Date

#### Engineer/Architect/Project Manager Certification:

I certify that, to the best of my knowledge, this payment application represents a true and correct statement of the work performed and is in conformance with the terms of the Contract.

\_\_\_\_\_  
 City Project Manager/Engineer/Architect Date

Contract Payment Status			
	Total Contract	Previous Activity	Current Application
a) Original Contract Amount	\$		
b) Previous Change Orders			
No _____ (Net + or-)	\$		
c) New Change Orders			
No _____ (Net + or-)	\$		
No _____ (Net + or-)	-		
No _____ (Net + or-)	\$		
No _____ (Net + or-)	-		
No _____ (Net + or-)	\$		
No _____ (Net + or-)	-		
d) Adjusted Total Contract	\$		
d=(a + b + c)			
e) Total Completed to Date	\$		
	-		
f) Previous Earnings		\$	
g) Earnings This Application		-	\$
g=(e - f)			
	\$		
h) Balance to Finish	-		
h=(d - e)			
i) Total Retainage Percent	\$		
t: 0.00%	-		

## Model Energy Management Services Agreement

<p><b><u>Checked and Approved:</u></b></p>   <p>_____</p> <p style="text-align: right;">Da te</p> <p>Project Supervisor</p>   <p><b><u>Approved:</u></b></p>   <p>_____</p> <p style="text-align: right;">Da te</p> <p>Director</p>	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%; text-align: right;">\$ -</td> <td style="width: 10%; text-align: center;">-</td> <td style="width: 10%; text-align: center;">\$ -</td> <td style="width: 20%;"></td> </tr> <tr> <td>j) Previous Retainage</td> <td></td> <td style="text-align: center;">\$ -</td> <td></td> </tr> <tr> <td>k) Retainage This Application</td> <td></td> <td></td> <td style="text-align: center;">\$ -</td> </tr> <tr> <td><math>k = (I - j)</math></td> <td></td> <td></td> <td></td> </tr> <tr> <td>l) Other Previous Deductions</td> <td style="text-align: center;">\$ -</td> <td style="text-align: center;">\$ -</td> <td></td> </tr> <tr> <td>m) Other Current Deductions</td> <td></td> <td></td> <td style="text-align: center;">\$ -</td> </tr> <tr> <td><b>n) Balance Due on Contract</b></td> <td style="text-align: center;">\$ -</td> <td></td> <td></td> </tr> <tr> <td><math>n = (h + I + l)</math></td> <td></td> <td></td> <td></td> </tr> <tr> <td>o) Total Previous Payments</td> <td></td> <td style="text-align: center;">\$ -</td> <td></td> </tr> <tr> <td><math>o = (f - j - l)</math></td> <td></td> <td></td> <td></td> </tr> <tr> <td>p) Payment This Application</td> <td></td> <td></td> <td style="text-align: center;">\$ -</td> </tr> <tr> <td><math>p = (g - k - m)</math></td> <td></td> <td></td> <td></td> </tr> </table>	\$ -	-	\$ -		j) Previous Retainage		\$ -		k) Retainage This Application			\$ -	$k = (I - j)$				l) Other Previous Deductions	\$ -	\$ -		m) Other Current Deductions			\$ -	<b>n) Balance Due on Contract</b>	\$ -			$n = (h + I + l)$				o) Total Previous Payments		\$ -		$o = (f - j - l)$				p) Payment This Application			\$ -	$p = (g - k - m)$			
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p) Payment This Application			\$ -																																														
$p = (g - k - m)$																																																	

### PAYMENT APPLICATION AND CERTIFICATION

TOTAL PREVIOUS PAYMENTS		PAYMENT APPLICATION #	
TOTAL PAYMENT THIS INVOICE		INVOICE #	
PROCUREMENT #		PAYMENT PERIOD FROM:	
PROJECT NAME		PAYMENT PERIOD TO:	
PROJECT ID #		VOUCHER # (for use by owner)	

Energy Conservation Measure #	Building	Original Contract Amount	Change Order Adjustment (+ or-)	Revised Contract Value	Percentage Complete	Amount Requested	Initials (for internal use only)
		\$0.00	\$0.00	\$0.00	%	\$0.00	

## Model Energy Management Services Agreement


The undersigned certifies that the information contained on this page is true and accurate.

Contractor: \_\_\_\_\_

Date: \_\_\_\_\_

## **Model Energy Management Services Agreement**

### **ATTACHMENT X: EQUIPMENT SUBMITTAL**

## **Model Energy Management Services Agreement**

### **ATTACHMENT X: TRAINING**

## **Model Energy Management Services Agreement**

### **EXHIBIT X: NOTICE TO PROCEED**



## Model Energy Management Services Agreement

### EXHIBIT X: CERTIFICATE OF ACCEPTANCE, FINAL AUDIT REPORT

The undersigned hereby accepts the content and form of the Energy Study Report.

IN WITNESS WHEREOF, the parties have executed this Form, the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

[ESCO]

[MUNICIPALITY]

Name \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

[MUNICIPAL AGENCY]

Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
Office of General Counsel

## Model Energy Management Services Agreement

### EXHIBIT X: CERTIFICATE OF ACCEPTANCE FORMS: DELIVERY AND ACCEPTANCE UPON SUBSTANTIAL COMPLETION

***[Use this form to accept or reject ECMs or group of ECMs as they are substantially completed. Execute separate certificates for each ECM or group of ECMs.]***

The Contractor warrants the ECM(s) for a period of one (1) year beginning on the substantial completion date printed below.

Substantial Completion Date: \_\_\_\_\_

ECMs:

***[List each ECM or group of ECMs separately.]***

[Contractor]

Name \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Owner acknowledges receipt of the following Energy Conservation Measure(s) listed below as fully installed, inspected, and in good working condition.

ECMs:

***[List each ECM or group of ECMs separately.]***

[Owner]

Name \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Owner does not accept that the ECMs listed below are substantially complete.

ECMs/OCMs:

***[List each ECM/OCM or group of ECMS/OCMs separately.]***

[Owner]

Name \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

## Model Energy Management Services Agreement

### 3.2: CERTIFICATE OF FINAL PROJECT ACCEPTANCE

Owner acknowledges Final Acceptance of all Energy Conservation Measures (the “ECMs”) described in Attachment 3: Scope of Work.

#### Checklist for Owner Acceptance of Completed Project

Task	Initials
All ECMs have been installed.	
All ECMS have been through inspection, start-up, testing, and interactive commissioning.	
Commissioning Report reviewed and approved.	
All discrepancies noted have been corrected; all punch list items are completed in accordance with the Agreement.	
Appropriate training on operations and maintenance (O&M) was conducted for each ECM	
O&M manuals and procedures have been provided.	
Recommended spare parts lists and spares have been provided.	
As-built drawings have been received and approved.	
Customer witnessing of M&V activities documentation completed.	
Post-installation M&V report received and approved.	
Utility rebate inspections and paperwork approved and submitted.	
Manufacturer warranty and registration paperwork submitted.	
All ECMs have performed properly for 30 days as of _____.	
Customer final inspection and acceptance is confirmed as of _____.	

[Contractor]

[Owner]

Name \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

## **Model Energy Management Services Agreement**

### **EXHIBIT X: PERFORMANCE AND PAYMENT BONDS**

***[Performance and payment bonds must be in place prior to the start of any work.  
Provide proof of construction bonds to DOER.]***

## Model Energy Management Services Agreement

### EXHIBIT X: DOER ANNUAL SAVINGS REPORT

*[An Annual Savings Report for baseline information must accompany a copy of the contract when filing with DOER. The Annual Savings Report may be found on the EMS web page at <http://www.mass.gov/eea/energy-utilities-clean-tech/green-communities/ems.html>]*

#### **General Instructions:**

File the first baseline report electronically with the executed contract to **EMS DOER@state.ma.us**. PDF files of this report will not be accepted. All information should be contained in the EMS contract.

Fill in all fields including total cost, annual savings, and unit savings.

This report is linked to a larger activity report. Do not change the names or placement of existing headings of the report. If additional columns are needed insert the columns where indicated. DOER does not accept reports with changed headings.

File verified savings 90 days after the end date of the specific guaranteed energy cost savings year.

#### **Summary:**

The page provides a general summary of the project including important dates. In some cases, DOER will provide information such as file dates for RFP, RFQ, etc. The contract should be a municipal official with the authority to contract for the services. Include the estimated operational date in the

#### **Annual Savings**

The annual savings should be listed in a table or schedule as part of the EMS contract and are the guaranteed savings based on standard M&V calculations. The estimated or contract savings will only change if there are extraordinary circumstances that require an amendment to the contract.

#### **ECM Savings**

The energy conservation measure savings should be listed in a table or schedule as part of the EMS contract and are the guaranteed savings based on standard M&V calculations for major categories such as lighting, lighting controls, HVAC, etc. The estimated or contract savings will only change if there

#### **Facilities**

List all facilities included in the contract. This list may be different than the facilities profile submitted with the RFP or RFQ because facilities may be eliminated but not added.

#### **M&V**

Each project has a Measurement and Verification Plan. This tab is used for verified annual savings only when there is a shortfall, otherwise, the verified savings are reported each year on the Annual Savings tab.

Model Energy Management Services Agreement

EXHIBIT X: DOER ANNUAL SAVINGS REPORT-SUMMARY

Massachusetts Department of Energy Resources

ANNUAL REPORT FOR ENERGY MANAGEMENT SERVICES PROJECT

File this report, electronically, to [EMS.DOER@state.ma.us](mailto:EMS.DOER@state.ma.us). PDF files of this report will not be accepted

Report Performance Period

Estimate    x    (initial report upon executing contract; report contract estimates/audit baseline)  
or verified savings

From:

To:

Awarding Authority:

Contact:

Title:

Address:

City/Zip

Phone:

Email:

RFP/RFQ File Date:

Financed Total:

Principle:

Interest:

Contractor:

Contract File Date:

Contract Start Date:

Term (#yrs.):

Project Cost:

Year 1 Total Savings:

Escalation Rate:

Project Acceptance Date:

Estimated date that project will be substantially complete]

Value and

Source	Type	Amount
Estimates	Grants	
	Utility Incentives	
	[Other,	

**EXHIBIT X: DOER ANNUAL SAVINGS REPORT-ANNUAL ECM SAVINGS FIRST YEAR**

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Model Energy Management Services Agreement

EXHIBIT X: DOER ANNUAL SAVINGS REPORT- ONSITE ENERGY GENERATION

Annual Guaranteed Onsite Electricity Generation						
Performance Year	Array Size		Annual Degradation Rate		Verified Annual Electricity Generation	Annual Estimated Cost Savings
	Estimated Annual Output	Electricity Price Increase Factor	Cost per kWh (if applicable)	Guaranteed Electricity Generation		
1		0		0	\$0	
2		0		0	\$0	
3		0		0	\$0	
4		0		0	\$0	
5		0		0	\$0	
6		0		0	\$0	
7		0		0	\$0	
8		0		0	\$0	
9		0		0	\$0	
10		0		0	\$0	
11		0		0	\$0	
12		0		0	\$0	
13		0		0	\$0	
14		0		0	\$0	
15		0		0	\$0	
16		0		0	\$0	
17		0		0	\$0	
18		0		0	\$0	
19		0		0	\$0	
20		0		0	\$0	
						\$0

# Model Energy Management Services Agreement

## EXHIBIT X: DOER ANNUAL SAVINGS REPORT- FACILITIES

## Model Energy Management Services Agreement

### EXHIBIT X: DOER ANNUAL SAVINGS REPORT- FACILITIES

**For verified savings only: [Use this section only to report measured and verified performance].**

- A. M&V Activities Conducted This Period - Detail measurements, monitoring and inspections conducted this reporting period in accordance with M&V plan (include all that apply for each one):
  - A. Measurement equipment used.
  - B. Equipment calibration documentation.
  - C. Dates/times of data collection or inspections, names of personnel, and documentation of Government witnessing.
  - D. Details to confirm adherence to sampling plan.
  - E. Include all measured values for this period. Include periods of monitoring and durations and frequency of measurements. (Include description of data format (headings, units, etc.).
  - F. Describe how performance criteria have been met.
  - G. Detail any performance deficiencies that need to be addressed by ESCO or agency.
  - H. Note impact of performance deficiencies or enhancements on generation of savings.
3. Performance and O&M Issues
  - A. Note impact of operating deficiencies or enhancements on generation of savings.
  - B. Note impact of maintenance deficiencies on generation of savings.
  - C. Detail any deficiencies needed to be addressed by contractor or agency.
4. Savings Adjustments - Provide summary of any energy and/or cost savings adjustments required.